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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF MARIN

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MAR 16 1992

11 CHURCH OF SCIENTOLOGY)
INTERNATIONAL, a California)
12 not-for-profit religious)
corporation;)

13 Plaintiffs,)

14 vs.)

15 GERALD ARMSTRONG; DOES 1)
16 through 25, inclusive,)

17 Defendants.)
18

No. 152 229

HUB LAW OFFICES

**ARMSTRONG'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO SCIENTOLOGY'S
MOTION FOR A PRELIMINARY
INJUNCTION**

Date: March 20, 1992
Time: 9:00 a.m.
Dept: 4 - Specially Set

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14	Cate v. Oldham	
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20	Chriddenden v. Hansen	
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21	Church of Scientology v. Commissioner of Internal Revenue	
22	(1984) 83 T.C. 381	
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26	Quan v. Kraseman	
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1	Red Lion Broadcasting v. F.C.C. (1969) 395 U.S. 367	-59-, -61-, -62-
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1	United States v. Zolin (1989) 109 S.Ct. 2619	---, --
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3	Universal Life Church, Inc. v. State (1984) 158 Cal.App.3d 533 205 Cal.Rptr. 11	-22-
4		
5	Van Shaick v. Church of Scientology (U.S.D.C. Mass.1982) 535 F.Supp. 1125	-4-
6	Whipple Quarry Co. v. L.C. Smith Co. (1952) 114 Cal.App.2d 214 P.2d 854, 855	-49-
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8	Williamson v. Superior Court (1978) 21 Cal.3d 829 148 CR 39	-36-
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10	Wollersheim v. Church of Scientology (1989) 212 Cal.App.3d 872 pet. for cert. granted, vacated and remanded on other grounds, 111 S.Ct. 1298 (1991)	-3-, -60-
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13	Youngblood v. Wilcox (1989) 207 Cal.App.3d 1368 255 Cal.Rptr. 527	-52-
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13	Witkin, Summary of California Law (9th Ed. 1987) Vol. 1, Contracts, § 441	39-41
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Date: March 20, 1992

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19 **I. INTRODUCTION**

20 In 1914, Justice Louis Brandeis said:

21 Publicity is justly recommended as a remedy for social
22 and industrial disease. Sunlight is said to be the best
of disinfectants, the electric light the most effective
23 of policemen.

24 The Scientology Organization abhors the light. This case is
25 an example regarding the Organization's use of money and
26 intimidation to attempt to turn out the lights and then to use the
27 judiciary's authority to keep them out. It requires the Court's
28 assistance to cloak its scheme in the Court's authority, dignity,

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1 and processes in an effort to suppress and restrain Gerald
2 Armstrong's ability to exercise his First Amendment right to
3 Freedom of Speech on the subject of Scientology, a subject of
4 widespread and current public interest. ^{1/}

5 Such an endeavor is an effort to "neutralize" Armstrong in
6 retribution for the uncompromising, and well-informed, stand he
7 has taken against Scientology, and in order to suppress any
8 contributions he might make to the national debate, or in judicial
9 proceedings prosecuted or defended by Scientology. Scientology
10 has a tremendous interest in the suppression of the truth of its
11 nature and practices.

12 Scientology's history of judicially, and extra-judicially,
13 attacking those whom it perceives to be its "enemies" by the
14 imposition of its policies of "Fair Game" and "Attack The Attacker"
15 ^{2/} is long standing. According to the Fair Game Policy, such

16

¹ Representative examples of the extent of the national
17 level of the debate regarding Scientology are: A six part front
18 page series on Scientology in the Los Angeles Times from June 24-
19 29, 1990. Greene Declaration, Exhibit 3-A; a May 6, 1991 Time
20 Magazine cover story entitled "Scientology - The Cult Of Greed -
21 How The Growing Dianetics Empire Squeezes Millions From Believers
22 Worldwide", Exhibit 3-B; and the subject of an hour and one half
23 treatment with Ted Koppel on ABC's Nightline. Greene Decl., ¶ 4.

24
² A corollary to the Fair Game Policy, discussed below, is
25 Scientology's Policy Letter of 25 February 1966 entitled "Attacks
26 on Scientology." Therein, the policy is laid out to "[s]pot who
27 is attacking us" and to "[s]tart feeding lurid, blood, sex, crime
28 actual evidence on the attacker to the press." Armstrong Decl.
Exhibit 2-A. Another Scientology policy states:

"The DEFENSE of anything is untenable. The only way to
defend anything is to ATTACK, and if you ever forget that,
then you will lose every battle you are ever engaged in,
whether it is in terms of personal conversation, public
debate, or in a court of law. NEVER BE INTERESTED IN
CHARGES. DO, yourself, much MORE CHARGING, and you will
WIN."

(continued...)

1 persons upon whom it is imposed,

2 [m]ay be deprived of property or injured by any
3 means by any Scientologist without any discipline
4 of the Scientologist. May be tricked, sued or lied
5 to or destroyed.

6 Armstrong Decl. Exhibit 2-C; Allard v. Church of Scientology of
7 California (1976) 58 Cal.App.3d 439, 443, fn. 1; Wollersheim v.
8 Scientology (1989) 212 Cal.App.3d 872, 880, 888-89, 893-94, pet.
9 for cert. granted, vacated and remanded on other grounds, 111
10 S.Ct. 1298 (1991) ³/; Church of Scientology of California v.
11 Armstrong (7/29/91) 91 Daily Journal D.A.R. 9172, 9174; 283
12 Cal.Rptr. 917 [Gerald Armstrong declared suppressive person,

13 ²(...continued)

14 Armstrong Decl. Exhibit 2-B. It is the implementation of Fair
15 Game and Attack the Attacker that has spurred the allegations
16 underlying Scientology's claims in the instant lawsuit.

17 ³ Whatever court deals with Scientology in depth arrives
18 at the same general characterization of the organization.
19 Recently, the Second District Court of Appeal wrote:

20 "To illustrate, centuries ago the inquisition was one of the core
21 religious practices of the Christian religion in Europe. This
22 religious practice involved torture and execution of heretics and
23 miscreants. [Citation.] Yet should any church seek to resurrect
24 the inquisition in this country under a claim of free religious
25 expression, can anyone doubt the constitutional authority of an
26 American government to halt the torture and executions? And can
27 anyone seriously question the right of the victims of our
28 hypothetical modern day inquisition to sue their tormentors for
any injuries - physical or psychological - they sustained?

29 We do not mean to suggest Scientology's retributive program
30 . . . represented a full-scale modern day 'inquisition.'
31 Nevertheless, there are some parallels in purpose and effect.
32 'Fair game' like the 'inquisition' targeted 'heretics' who
33 threatened the dogma and institutional integrity of the mother
34 church. One 'proven' to be a 'heretic,' an individual was to be
35 neutralized. In medieval times neutralization often meant
36 incarceration, torture and death. [Citations.] As described in
37 the evidence at this trial the 'fair game' policy neutralized the
38 'heretic' by stripping this person of his or her economic,
39 political and psychological power."

40 Wollersheim 212 Cal.App.3d at 888.

1 labelled an enemy of the church and subjected to fair game
2 policy.] ⁴/

3 In this case, Scientology is suing Armstrong in order to
4 destroy his constitutionally protected rights to Freedom of
5 Speech, Freedom of Association, and the right to earn a living.
6 Moreover, Scientology is attempting to prevent the truth
7 concerning its nature and practices from seeing the light of day,
8 either in a judicial context or in the First Amendment context of
9 the "marketplace of ideas."

10 This court should not allow itself to assist Scientology. By
11 design Scientology intends to corrupt the fairness and the
12 integrity of the judicial process by eliminating facts it does not
13 like. The objective of such corruption is to manufacture an
14 unfair advantage for Scientology over its adversaries in
15 litigation and in social debate. This is to be done by the
16 elimination of accurate sources of information about its nature
17 and practices, so as to avoid accountability for the consequences
18 of its civilly and sometimes criminally offensive conduct. ⁵/

19
20 ⁴ See also United States v. Kattar (1st Cir.1988) 840
21 F.2d 118, 125; Van Schaick v. Church of Scientology (U.S.D.C.
22 Mass.1982) 535 F.Supp. 1125, 1131 n.4; Christoffersen v. Church
23 of Scientology (1982) 57 Ore.App. 203, 644 P.2d 577, 590-92;
24 Church of Scientology v. Commissioner of Internal Revenue (1984)
25 83 T.C. 381, 411-12, aff'd, 823 F.2d 1310 (9th Cir. 1987).

26 No one, not even the Courts, is beyond the scope of "Fair
27 Game." Declaration of Ford Greene (Greene Decl.), Exhibit 3-C.
28 American Lawyer, 12/80, "Scientology's War Against the Judges."

29
30 ⁵ For example, see Exhibit 1-A, Declaration of Vicki J.
31 Aznaran executed August 8, 1988. Ms. Aznaran, former president of
32 Scientology's Religious Technology Center was "one of the highest
33 ranking members of Scientology and was involved in upper
34 management." Id. at 3:14-4:17. She testified that the "stated
35 policy," Id. at 4:21, for Scientology's "litigation tactics,"
36 Id. at 1:28, was "to use the legal system to abuse and harass its
37 (continued...)"

1 **II. SUMMARY OF ARGUMENT** ^{6/}

2 Armstrong will argue that Scientology's motion for a
3 preliminary injunction should be denied because it cannot be
4 specifically enforced in that it is unfair, unreasonable and
5 unjust. It is unfair because Scientology wants to be able to
6 disseminate falsehoods about Armstrong, yet restrain Armstrong
7 from telling the truth about it. The agreement is unreasonable
8 because it is one-sided and not supported by consideration. It is
9 unjust because it perpetrates a fraud upon the judicial system by
10 the elimination of the pool of credible and knowledgeable
11 witnesses, therefore skewing the fact-finding process and creating
12 an unconscionable litigation advantage for Scientology.

13 Enforcement of the agreement would act as a prior restraint
14 of the First Amendment rights of both Armstrong and the public on
15 a current issue of widespread, public interest, Scientology.

16
17 ⁵(...continued)
18 enemies." Id. at 4:21-22. During Armstrong I, Ms. Aznaran, aware
19 that Judge Breckenridge had ordered the production of Armstrong's
20 pre-clear folders, "was ordered to go through Armstrong's folders
21 and destroy or conceal anything that might be damaging to
22 Scientology or helpful to Armstrong's case. This practice is
23 known within Scientology as 'culling PC folders' and is a common
24 litigation tactic employed by Scientology." Id. at 5:6-18. Ms.
25 Aznaran did the same thing in Wollersheim. Id. at 5:19-26. Ms.
26 Aznaran also has first-hand knowledge of Scientology's large-scale
27 destruction of documents to subvert IRS investigations, Id. at
28 7:10-28 & 10:18-11:3, plans to compromise judges, Id. at 6:22-7:9
& 9:11-10:5, schemes to infiltrate governmental agencies, Id. at
8:14-24, set up critics for false criminal charges, Id. at 8:25-
9:10, trick the Mayor of Clearwater, Florida into accepting a
Scientologist lawyer to represent him in litigation against
Scientology, Id. at 9:11-18, and develop plans for violent
assaults on individuals who use Scientology without paying for it.
Id. at 11:4-16.

27 ⁶ Armstrong hereby adopts and incorporates the arguments
28 ably set forth in the amicus curiae brief filed on behalf of the
proposed Intervenor, Joseph A. Yanny.

1 Thus, the relief sought by Scientology is not only an affront to
2 equity, it is unconstitutional.

3 **III. STATEMENT OF FACTS**

4 On August 2, 1982, The Scientology Organization (CSC) ^{7/}
5 sued Armstrong in Los Angeles Superior Court Action No. C 420153.
6 ("Armstrong I") Exhibit 1-B: Complaint. Generally, the Armstrong
7 I complaint alleged that Armstrong "converted to his own use
8 confidential archive materials and disseminated the same to
9 unauthorized persons, thereby breaching his fiduciary duty to the
10 [c]hurch, which sought return of the documents, injunctive relief
11 against further dissemination of the information contained
12 therein, imposition of a constructive trust over the property and
13 any profits Armstrong might realize from his use of the materials,
14 as well as damages." Exhibit 1-C at p. 2: Opinion of Division
15 Three, Second Appellate District, California Court of Appeal. ^{8/}

16 Defendant GERALD Armstrong, prevailed in that first trial.
17
18
19

20 ⁷ "Scientology Organization (CSC)" refers to the Church of
21 Scientology of California, a particular corporate component of the
larger Scientology Organization.

22 ⁸ Also on August 8, 1982, in Armstrong I, Scientology
23 sought injunctive relief to prevent Armstrong from filing
24 declarations, based on his first-hand knowledge, on behalf of
25 litigants adverse to Scientology. Exhibit 1-D. Particularly, see
26 Affidavit of Gerry Armstrong, executed July 22, 1982 in Van
27 Schaick v. Church of Scientology of California, U.S. District
28 Court, District of Massachusetts, Case No. 79-2491-G, Exhibit 1-
D-1 and Affidavit of Gerry Armstrong, executed June 25, 1982, in
Burden v. Church of Scientology of California, U.S. District
Court, Middle District of Florida, Tampa Division, Case No. 80-
501-Civ-T-X. Exhibit 1-D-2. Ten years ago Scientology started in
Los Angeles what it is now trying to accomplish in Marin: the
judicially ordered prior restraint of Gerald Armstrong.

1 9/ On June 22, 1984, the Honorable Paul G. Breckenridge, Jr.,
2 filed his Memorandum of Intended Decision in Armstrong I. He held
3 "plaintiff and plaintiff in intervention are to take nothing, and
4 defendant is entitled to Judgment and costs." Exhibit 1-G, at
5 1:22-24.

6 In that Decision, Judge Breckenridge specifically found the
7 Scientology organization to be malevolent, in part because the
8 organization "or its minions is fully capable of intimidation [of
9 witnesses, including Armstrong] or other physical or psychological
10 abuse if it suits their ends." Id. at 8:3-6. He further provided
11 the following factual findings, inter alia, regarding Scientology:

12 In 1970 a police agency of the French Government conducted an
13 investigation into Scientology and concluded "this sect,
14 under the pretext of 'freeing humans' is nothing in reality
15 but a vast enterprise to extract a maximum amount of money
16 from its adepts by (use of) pseudo-scientific theories, by
17 (use of) 'auditions' and 'stage settings' (lit. to create a
18 theatrical scene') pushed to extremes (a machine to detect
19 lies, its own particular phraseology . . .), to estrange
20 adepts from their families and to exercise a kind of
21 blackmail against persons who do not wish to continue with
22 this sect." [footnote omitted] From the evidence presented
23 to this court in 1984, at the very least, similar conclusions
24 can be drawn.

19 In addition to violating and abusing its own members civil
20 rights, the organization over the years with its "Fair Game"
21 doctrine has harassed and abused those persons not in the
22 Church whom it perceives as enemies. The organization is
23 clearly schizophrenic and paranoid, and this bizarre
24 combination seems to be a reflection of its founder LRH [L.
25 Ron Hubbard]. The evidence portrays a man who has been
26 virtually a pathological liar when it comes to his history,
27 background, and achievements. The writings and documents in

25 9 In Armstrong I, on April 17, 1982, ARMSTRONG filed his
26 cross-complaint stating causes of action for fraud, breach of
27 contract, and intentional infliction of emotional distress.
28 Exhibit 1-E. On July 1, 1983, Armstrong filed his Third Amended
Cross-Complaint for Damages. Exhibit 1-F. As an exhibit to
Armstrong's Third Amended Cross-Complaint was the Order declaring
him to be a "Suppressive Person," on the basis of which he became
Fair Game. Exhibit 1-F-1.

1 evidence additionally reflect his egoism, greed, avarice,
2 lust for power, and vindictiveness and aggressiveness against
3 persons perceived by him to be disloyal or hostile.

3 Id. at 8:7-9:4. (Emphasis added.)

4 In contrast to his findings regarding Scientology, Judge
5 Breckenridge found Armstrong and his witnesses to be credible and
6 sympathetic. He wrote:

7 As indicated by its factual findings, the court finds
8 the testimony of Gerald and Jocelyn Armstrong, Laurel
9 Sullivan, Nancy Dincalcis, Edward Walters, Omar Garrison,
10 Kima Douglas, and Homer Schomer to be credible, extremely
11 persuasive and the defense of privilege or justification
12 established and corroborated by this evidence . . . In all
13 critical and important matters, their testimony was precise,
14 accurate, and rang true. The picture painted by these former
15 dedicated Scientologists, all of whom were intimately
16 involved [with the highest echelons of power in] the
17 Scientology Organization, is on one hand pathetic, and on the
18 other, outrageous. Each of these persons literally gave
19 years of his or her respective life in support of a man, LRH
20 [L. Ron. Hubbard], and his ideas. Each has manifested a
21 waste and loss or frustration which is incapable of
22 description.

15 Id. at 7:9-26. (Emphasis added.)

16 On August 10, 1984, Judgment was entered in Armstrong's
17 favor. Exhibit 1-H. On August 23, 1984, Scientology filed its
18 notice of appeal of the Breckenridge decision. Exhibit 1-I.

19 Eugene Ingram is a private investigator who is employed by
20 Scientology. Exhibit 1-A at ¶ 22; Exhibit 2, ¶ 20 (c). On
21 November 7, 1984, Ingram embarked on what Scientology calls a
22 "police-sanctioned investigation" of Mr. Armstrong. Cmplt. at p.
23 4:23. Ingram claims to have obtained authorization from the Los
24 Angeles Police Department to investigate Armstrong and his then-
25 attorney, Michael J. Flynn, "regarding possible criminal
26 violations of, but not limited to , California Penal Code §664
27 (Attempts), §134 (Preparing False Documentary Evidence), §182
28

1 (Conspiracy) and/or any other violations of criminal laws." There
2 was never, however, any such "authorized" investigation. Exhibit
3 2-K. Indeed, when Los Angeles Chief of Police, Daryl F. Gates
4 discovered the foregoing, he is issued a public announcement on
5 the subject which publicly invalidated any link between his
6 department and private investigator Ingram. He said:

7 It has come to my attention that a member of the L.A.P.D.
8 very foolishly, without proper authorization and contrary to
9 the policy of this Department, signed a letter to Eugene M.
10 Ingram, believed to have been drafted by Ingram himself. The
11 letter purports to authorize Ingram to engage in electronic
12 eavesdropping. The letter, along with all the purported
13 authorization is invalid and is NOT a correspondence from the
14 Los Angeles Police Department.

15 The Los Angeles Police Department has not cooperated with
16 Eugene Ingram. It will be a cold day in hell when we do.

17 I have directed an official letter to Ingram informing him
18 that the letter signed by Officer Phillip Rodrieguez dated
19 November 7, 1984, and all other letters of purported
20 authorizations directed to him, signed by any member of the
21 Los Angeles Police Department, are invalid and unauthorized.

22 Internal Affairs Division is now investigating the entire
23 incident.

24 Exhibit 2-L. (Emphasis added.)

25 The factual basis for Scientology's claims against Armstrong
26 that Armstrong was attempting to "destroy" Scientology do not
27 exist. Scientology's fanciful hypothesis, which provides the
28 factual basis for its requested injunction, was completed refuted
in a 12-page letter dated April 25, 1986, from Los Angeles Deputy
District Attorney Robert N. Jorgensen, to Scientology officials.

Exhibit 2-M. ¹⁰/

¹⁰ Based upon Chief Gates, public repudiation of the so-
called "police-sanctioned investigation" and the Los Angeles
District Attorney's Office conclusion there was no evidence that
Armstrong had engaged in any wrongdoing, one can only conclude
(continued...)

1 Thereafter, the trial of Armstrong's cross-complaint in
2 Armstrong I was set for trial on January 17, 1987. The facts to
3 be proved at said trial had already been partially sketched by
4 Judge Breckenridge in his June 22, 1984, Decision:

5 After the within lawsuit was filed on August 2, 1982,
6 Defendant Armstrong was the subject of harassment, including
7 being followed and surveilled by individuals who admitted
8 employment by Plaintiff; being assaulted by one of these
9 individuals; being struck bodily by a car driven by one of
10 these individuals; having two attempts made by said
11 individuals apparently to involve Defendant Armstrong in a
12 freeway automobile accident; having said individuals come
13 onto Defendant Armstrong's property, spy in his windows,
14 create disturbances, and upset his neighbors.

15 Appendix to Breckenridge Opinion at 14:22-15:3, Exhibit 1-G.

16 In the Armstrong I litigation, on both the complaint and
17 cross-complaint, Armstrong was represented by Boston attorney
18 Michael J. Flynn, who also was Armstrong's employer. Exhibit 2, ¶
19 7 .

20 In early December 1986, an agreement was reached in Los

21 ¹⁰(...continued)
22 that at this time, in this Marin County Superior Court action,
23 Scientology is implementing the substance of Hubbard
24 Communications Office policy Letter of 15 August 1960. In part,
25 it states:

26 "In the face of danger from Govts or courts there are only two
27 errors one can make: (a) do nothing and (b) defend. The right
28 things to do with any threat are to (1) Find out if we want to
29 play the offered game or not, (2) If not, to derail the offered
30 game with a feint or attack upon the most vulnerable point which
31 can be disclosed in the enemy ranks, (3) Make enough threat or
32 clamor to cause the enemy to quail, (4) Don't try to get any money
33 out of it, (5) Make every attack by us also sell Scientology and
34 (6) Win. If attacked on some vulnerable point by anyone or
35 anything or any organization, always find or manufacture enough
36 threat against them to cause them to sue for peace. Peace is
37 bought with an exchange of advantage, so make the advantage and
38 then settle. Don't ever defend. Always attack. Don't ever do
39 nothing. Unexpected attacks in the rear of the enemy's front
40 ranks works best."

41 Exhibit 1-N at p. 484. (Emphasis added.)

1 Angeles by the Scientology Organization and Flynn to settle most
2 of the cases in which Flynn was involved, either as counsel, or as
3 a party himself. Exhibit 2, ¶¶ 10-17.

4 At its outset, the agreement ^{11/} set up what can only be
5 characterized as a collusive appeal that was designed to
6 neutralize the stinging opinion of Judge Breckenridge in Armstrong
7 I. Thus, Paragraph 4B of the settlement agreement stated:

8 As of the date of this settlement Agreement is executed,
9 there is currently an **appeal pending** before the California
10 Court of Appeal, Second Appellate District, Division 3,
11 arising out of the above referenced action delineated as
12 **Appeal No. B005912**. It is understood that this appeal arises
13 out of the Church of Scientology's complaint against
14 plaintiff which is not settled herein. This appeal shall be
15 maintained notwithstanding this Agreement. Plaintiff agrees
16 to waive any rights he may have to take any further appeals
17 from any decision eventually reached by the Court of Appeal
18 or any rights he may have to oppose (by responding brief or
19 any other means) any further appeals taken by the Church of
20 Scientology of California. The Church of Scientology of
21 California shall have the right to file any further appeals
22 it deems necessary. [Emphases added.]

23 Paragraph 7D of the agreement prohibited Armstrong from
24 exercising his First Amendment rights to Free Speech on the
25 subject of Scientology. He was prohibited specifically from
26 publishing or attempting to publish any information regarding
27 Scientology, or discussing Scientology with others. He was
28 required to "maintain strict confidentiality and silence with
respect to his experiences with the Church of Scientology and any
knowledge or information he may have concerning the Church of
Scientology, L. Ron Hubbard" or the Scientology Organization.
Exhibit 2-D.

Paragraph 7E required Armstrong to return all materials in

¹¹ The settlement agreement has never been approved by the
Los Angeles Superior Court. Exhibit 1-S, 1-T at p. 28:24-26.

1 Appendix A to the agreement, including evidence in Armstrong I and
2 United States v. Zolin. ^{12/}

3 Paragraph 7G prohibited Armstrong from conducting himself
4 wherein he would

5 voluntarily assist or cooperate with any person adverse to
6 Scientology in any proceeding against any of the Scientology
7 organizations . . . Plaintiff also agrees that he will not
8 cooperate in any manner with any organizations aligned
9 against Scientology.

10 Paragraph 7H of the settlement agreement required Armstrong
11 not to participate in any litigation involving the Scientology
12 Organization unless it was pursuant to subpoena. But in Paragraph
13 7H, however, the agreement required Armstrong to avoid any service
14 of subpoena by stating that he "shall not make himself amenable to
15 service of any such subpoena." ^{13/}

16 Paragraph 7I required that any evidence developed during the
17 course of Armstrong I to not exist in the future. It states:

18 . . . in the event of any future litigation . . . any past
19 action or activity, either alleged in this lawsuit or
20 activity similar in fact to the evidence that was developed

21 ¹² For a more in depth discussion of the facts in Zolin,
22 see page 32, infra.

23 ¹³ In full, Paragraph 7H states:

24 [ARMSTRONG] agrees not to testify or otherwise participate in
25 any other judicial, administrative or legislative proceeding
26 adverse to Scientology or any of the Scientology Churches,
27 individuals or entities listed in Paragraph 1 above unless
28 compelled to do so by lawful subpoena or other lawful
process. [ARMSTRONG] shall not make himself amenable to
service of any such subpoena in a manner which invalidates
the intent of this provision. Unless required to do so by
such subpoena, [ARMSTRONG] agrees not to discuss this
litigation or his experiences with and knowledge of the
Church with anyone other than members of his family. As
provided hereinafter in Paragraph 18(d), the contents of this
Agreement may not be disclosed. [Emphasis added.]

Exhibit 2-D at pp. 10-11.

1 during the course of this lawsuit, will not be used by either
2 party against the other in any future litigation. In other
3 words, the "slate" is wiped clean concerning past actions by
4 any party.

5 Paragraph 10 required Armstrong to

6 not assist or advise anyone, including individuals,
7 partnerships, associations, corporations, or governmental
8 agencies contemplating any claim or engaged in litigation or
9 involved in or contemplating any activity adverse to the
10 interests of any entity or class of persons listed above in
11 Paragraph 1 of this Agreement.

12 Paragraph 18D required Armstrong not to disclose the contents
13 of the Agreement.

14 On December 5, 1986, Armstrong, along with nearly a score of
15 other litigants adverse to Scientology - all of whom were
16 represented by Flynn - was flown to Los Angeles to participate in
17 a "global settlement." Exhibit 2, ¶ 10. After Armstrong's
18 arrival in Los Angeles, he was shown a copy of a document entitled
19 "Mutual Release of All Claims and Settlement Agreement" and some
20 other documents that he was expected to sign. Exhibit 2, ¶ 10.

21 When Armstrong read the settlement agreement he was shocked
22 and heartsick. He told Mr. Flynn that the condition, set forth in
23 settlement agreement ¶ 7D, of "strict confidentiality and silence
24 with respect to his experiences with the [Scientology
25 organization]" was outrageous and not capable of compliance
26 because it involved over 17 years of his life. Armstrong told
27 Flynn that ¶ 7D would require him to pay \$50,000 if he told a
28 doctor or a psychologist about his experiences over those 17
years, or if he put on a job resume the positions he had held
while in Scientology. He told Flynn that the requirements of non-
amenability to service of process in ¶ 7H and non-cooperation with
persons or organizations adverse to the organization in ¶¶ 7G and

1 10 were obstructive of justice. Armstrong told Flynn that
2 agreeing in ¶ 4B to allow Scientology's appeal of Judge
3 Breckenridge's decision in Armstrong I to continue without
4 opposition was unfair to the courts and all the people who had
5 been helped by the decision. Armstrong said to Flynn the
6 affidavit that Scientology demanded he sign along with the
7 settlement agreement was false. Exhibit 2, ¶. 12.

8 In answer to Armstrong's objections to conditions of the
9 settlement agreement, Flynn said that the clauses which pertained
10 to silence, liquidated damages, and anything calling for the
11 obstruction of justice "were not worth the paper they were printed
12 on." Flynn stated to Armstrong that Armstrong could not contract
13 away his Constitutional rights, and that such conditions were not
14 enforceable. Exhibit 2 at ¶ 13.

15 Flynn further told Armstrong that the clauses concerning
16 Armstrong's claims against the organization and vice-versa were
17 the essential elements of the settlement and were what the
18 organization was paying for. Flynn stated that everyone was sick
19 of the litigation, wanted to get on with their lives, and that he
20 was personally sick of the threats to him and his family and
21 wanted to get out. Exhibit 2 at ¶ 14.

22 Flynn said that as a part of the settlement he and all co-
23 counsels had agreed to not become involved in organization-related
24 litigation in the future and expressed a deep concern that the
25 American Justice System cannot properly deal with Scientology, its
26 lawyers and their contemptuous abuse. Mr. Flynn told Armstrong
27 that if Armstrong failed to sign the documents he could expect no
28 more than further years of harassment and misery. Exhibit 2 at ¶

1 14.

2 One of Mr. Flynn's other clients, Edward Walters, was in the
3 room with Flynn and Armstrong when Armstrong objected to many of
4 the condition to be imposed by the settlement. During the
5 discussion and in Flynn's presence, Mr. Walters yelled at
6 Armstrong, accused him of killing the settlement for everyone, and
7 that everyone else had signed or would sign, and everyone else
8 wanted the settlement. Mr. Flynn said that the organization would
9 only settle with everyone together; otherwise there would be no
10 settlement. Exhibit 2 at ¶ 14.

11 Under those pressures, Armstrong signed the agreement.
12 Exhibit 2 at ¶ 17.

13 On December 11, 1986, Armstrong's attorney, Michael J. Flynn
14 and Scientology attorneys John G. Peterson, Michael Lee Hertzberg
15 and Lawrence E. Heller appeared, ex parte, before Judge
16 Breckenridge and announced that they had settled Armstrong's
17 Cross-Complaint in Armstrong I. Exhibit 1-J, Reporter's
18 Transcript of Proceedings, Thursday, December 11, 1986. At that
19 time said attorneys submitted a Joint Stipulation of Dismissal,
20 Exhibit 1-K; an Order Dismissing Action With Prejudice, Exhibit
21 1-L; a Stipulation for Return of Sealed Materials and Exhibits,
22 Exhibit 1-M; Order for Return of Exhibits and Sealed Documents,
23 Exhibit 1-N; and a Stipulated Sealing Order, Exhibit 1-O. The
24 filing of said documents was spelled out in the Court's minute
25 order dated December 11, 1986. Exhibit 1-P.

26 When Judge Breckenridge inquired whether the agreement
27 impacted the appeal, the attorneys said that the agreement did
28 not. Exhibit 1-J at p. 2:16-23. Further, none of the attorneys

1 advised Judge Breckenridge of a stipulation that any retrial of
2 Armstrong I ordered by the Court of Appeal would limit damages
3 claimed by Scientology to \$25,000. Exhibit 1-Q. The attorneys
4 also failed to advise Judge Breckenridge there was a side
5 agreement between Michael Flynn and Scientology attorneys Cooley
6 and Heller whereby Scientology agreed to indemnify Flynn if the
7 Court of Appeal reversed Armstrong I and they tried the case and
8 won. Exhibit 1-R.

9 On December 12, 1986, Judge Breckenridge through his clerk,
10 noted that the settlement agreement referred to in both the Joint
11 Stipulation of Dismissal and Order Dismissing Action had not been
12 filed. Exhibit 1-S. The settlement agreement never was filed
13 with the Los Angeles Court because, according to Scientology's
14 attorney, it was "irrelevant." Exhibit 1-T at 28:24-26.

15 On December 18, 1986, the Court of Appeal in Appeal No.
16 B005912 dismissed the appeal as premature because Armstrong's
17 cross-complaint remained to be tried. Exhibit 1-U. ¹⁴/
18 Scientology's petition for rehearing was denied by the Court of
19 Appeal on January 15, 1987, Exhibit 1-Y, as was its petition for
20 review by the California Supreme Court on March 11, 1987. Exhibit
21 1-W.

22 On January 30, 1987, Scientology filed its Unopposed Motion
23 to Withdraw Memorandum of Intended Decision in Armstrong I.
24 Exhibit 1-X. On February 2, 1987, Judge Breckenridge denied said
25

26 ¹⁴ The Court of Appeal would not have been advised of the
27 resolution of the underlying Cross-Complaint in Armstrong I - the
28 existence of which it based its order of dismissal of the appeal -
because the fate of said appeal was the subject of Paragraphs 4A
and 4B of the secret agreement.

1 motion by the "Church." Exhibit 1-Y. On February 9, 1987,
2 Scientology filed its second appeal of Armstrong I. Exhibit 1-Z.

3 On July 29, 1991, the Court of Appeal in Church of
4 Scientology of California v. Armstrong (7/29/91) 91 Daily Journal
5 D.A.R. 9172, 9174; 283 Cal.Rptr. 917 affirmed Judge Breckenridge's
6 decision. Exhibit 1-C. On October 17, 1991, the California
7 Supreme Court denied review. Exhibit 1-AA. On December 5, 1991,
8 the remittitur issued. Exhibit 1-BB.

9 After Armstrong signed the settlement agreement, he
10 endeavored to abide by same. Exhibit 2, ¶ 18. Scientology,
11 however, was not so able to restrain itself.

12 In 1987, less than one year after the agreement was signed,
13 Scientology distributed a "dead agent" pack attacking Armstrong.
14 [It stated, inter alia, "Armstrong's description of the RPF in
15 Corydon's book can also be viewed in light of Armstrong's numerous
16 false claims and lies on other subject matters."] Exhibit 2, ¶ 20
17 and Exhibit 2-E. ^{15/}

18 On October 5, 1987, Scientology representative Kenneth Long
19 executed four affidavits in Church of Scientology of California v.
20 Miller, High Court of Justice, Chancery Division, No. 1987 C. No.
21 6140, wherein Long solely discussed matters which pertained to his
22 characterizations of Armstrong's activities that had been at issue
23

24 ¹⁵ RPF in an acronym for "Rehabilitation Project Force." It
25 is a forced labor camp wherein Scientology staff members are
26 incarcerated for real or imagined offenses. Clad in rags, inmates
27 must perform hard labor and receive little food and sleep and are
28 deprived of medical treatment. Exhibit 1-A at 12:3-26. See also,
Exhibit 1-II, Amended Declaration of Vicki J. Aznaran In
Opposition To Plaintiffs' [Sic] Motion For Sanctions, for a
further description of RPF; and Exhibit 1-D-2 at pp. 15-16
describing some of Armstrong's knowledge of the RPF.

1 in the settled litigation. His "first affidavit" was 18 pages
2 long, Exhibit 2-F; his "second affidavit" was 21 pages long,
3 Exhibit 2-G; and "third affidavit" was 4 pages long. Exhibit 2-H
4 Long's third affidavit specifically stated:

5 Gerald Armstrong has been an admitted agent provocateur
6 of the U.S. Federal Government who planned to plant
7 forged documents in [Scientology's] files which would
8 then be "found" by Federal officials in subsequent
9 investigation as evidence of criminal activity.

10 Id., ¶ 8. Long's "fourth affidavit" accused Armstrong of
11 violating the Breckenridge Court's sealing orders. Exhibit 1-I.

12 On or about November 1, 1989, in the case entitled Corydon v.
13 Church of Scientology International, Inc., et al., LASC No.
14 C694401, Scientology attorney Lawrence E. Heller filed a Notice of
15 Motion and Motion of Defendant Author Services, Inc. to Delay or
16 Prevent the Taking of Certain Third Party Depositions by
17 Plaintiff; Memorandum of Points and Authorities; Declarations of
18 Lawrence E. Heller and Howard Schomer in Support Thereof. Exhibit
19 1-CC. In his memorandum, Heller discussed the "block settlement"
20 of which the Armstrong agreement was a part. He stated:

21 One of the key ingredients to completing these
22 settlements, insisted upon by all parties involved, was
23 strict confidentiality respecting: (1) the Scientology ...
24 staff member's experiences with ... Scientology; (2) any
25 knowledge possessed by the Scientology entities concerning
26 those staff members ...; and (3) the terms and conditions
27 of the settlements themselves. Peace has reigned since the
28 time the interested parties entered into the settlements, all
29 parties having exercised good faith in carrying out the terms
30 of the settlement, including the obligations of
31 confidentiality. [Original emphasis.]

32 Id., at 4:9-19. In his sworn declaration, attorney Heller
33 testified:

34 I was personally involved in the settlements which are
35 referred to in these moving papers which transpired some two
36 and one-half years ago. Those settlements concerned well

1 over a dozen plaintiff litigants as well as various Church of
2 Scientology entities . . . Settlement negotiations, which
3 were not supervised by any court, were arduous and, as is
4 often the case in these instances, sometimes contentious.
5 However, a "universal settlement" was ultimately entered into
6 between the numerous parties. The universal settlement
7 provided for non-disclosure of all facts underlying the
8 litigation as well as non-disclosure of the terms of the
9 settlements themselves. The non-disclosure obligations were
10 a key part of the settlement agreements insisted upon by all
11 parties involved. [Original emphasis.]

12 Id. at 8:15-9:7.

13 On August 12, 1991, Scientology filed a complaint styled
14 Church of Scientology International v. Xanthos, et al., in United
15 States District Court, Central District of California, No. 91-
16 4301-SVW(Tx). Exhibit 1-DD. Therein, Scientology stated:

17 The infiltration of [Scientology] was planned as an
18 undercover operation by the LA CID along with former
19 [Scientology] member Gerald Armstrong, who planned to seed
20 [Scientology] files with forged documents which the IRS could
21 then seize in a raid. The CID actually planned to assist
22 Armstrong in taking over the [Scientology] hierarchy which
23 would then turn over all [Scientology] documents to the IRS
24 for their investigation.

25 Id. at 14:3-10.

26 On or about August 26, 1991, Scientology filed its
27 Supplemental Memorandum in Support of Defendants' Motion to
28 Dismiss Complaint with Prejudice in Aznaran v. Church of
29 Scientology of California, et al. United States District Court,
30 Central District of California, No. CV-88-1786-JMI(Ex). Exhibit
31 EE. Therein Scientology attorney William T. Drescher stated that
32 in 1984 Armstrong was

33 plotting against ... Scientology ... and seeking out staff
34 members who would be willing to assist him in overthrowing
35 [Scientology] leadership. [Scientology] obtained information
36 about Armstrong's plans and, through a police-sanctioned
37 investigation, provided Armstrong with the "defectors" he
38 sought. On November 30, 1984, Armstrong met with one Michael
39 Rinder, an individual whom Armstrong thought to be one of his
40 "agents" (but who in reality was loyal to [Scientology]). In

1 the conversation, recorded with written permission from law
2 enforcement, Armstrong stated the following in response to
3 questions by Mr. Rinder as to whether they had to have actual
evidence of wrongdoing to make allegations in Court against
[Scientology's] leadership:

4 Armstrong: They can allege it. They can allege it. They
5 don't even have -- they can allege it.

6 RINDER: So they don't even have to -- like -- they don't have
to have the documents sitting in front of them and then --

7 Armstrong: Fucking say the organization destroys documents.
8 . . . Where are the -- we don't have to prove a goddamn
9 thing. We don't have to prove shit; we just have to allege
10 it.

(Ex. E, Declaration of Lynn R. Farney, para. 6.) With such a
criminal attitude, Armstrong fits perfectly into Yanny's game
plan for the Aznaran case.

11 Id. at 5:11-6:12.

12 Notwithstanding the fact that Scientology had failed comply
13 with the Order Dismissing Action it provided to Judge Breckenridge
14 and file the agreement, on October 3, 1991, it brought a motion in
15 Los Angeles Superior Court to enforce that agreement. Exhibit 1-
16 FF. Armstrong opposed that motion, Exhibit 1-GG, and Scientology
17 replied. Exhibit 1-HH. After Armstrong filed a supplemental
18 memorandum on the issue of jurisdiction, Exhibit 1-II, Scientology
19 filed its additional reply. Exhibit 1-JJ. Scientology's motion
20 was denied on the ground that the Court did not have jurisdiction
21 to enforce a settlement agreement that had never been before the
22 Court. Exhibit 1-T.

23 Thereafter, Scientology changed the caption on the papers it
24 used in its rejected attempt in Los Angeles Superior Court to
25 enforce the agreement against Armstrong to initiate this
26 proceeding against him. Compare, Exhibit 1-FF, to Memorandum in
27 Support of Motion for Preliminary Injunction.

28 After its initial unsuccessful ex parte attempt to seal the

1 entire proceedings in the instant case in Marin County Superior
2 Court failed, the Scientology Organization made an unsuccessful ex
3 parte application to Judge Savitt for an order sealing the
4 settlement agreement in this Court's file.

5 Now, the Scientology Organization asks this court to enforce
6 illegal settlement provisions against Armstrong. If the
7 injunction is obtained, the Scientology Organization will
8 subsequently ask this Court to jail Mr. Armstrong for the free
9 exercise of his Constitutional Right to Free Speech whenever he
10 discusses Scientology.

11 In the face of the foregoing, it is respectfully submitted
12 that the purpose of the Settlement Agreement is to ensure that
13 "the 'slate' is wiped clean concerning [the Scientology
14 Organization's] past actions." Settlement Agreement at ¶ 7I, p.
15 11. ^{16/} Such "cleaning" of the judicial slate was, and by the
16 proposed injunction is further, to be done by collusively
17 engineering the reversal of the Breckenridge decision, on one
18 hand, and the purchasing the silence and unavailability of all
19 effective witnesses, including Armstrong, knowledgeable of its
20 criminal and civil violations, on the other.

21 Thus, the provisions of the settlement agreement for which
22

23 ¹⁶ That such was the case is conclusively indicated on
24 January 30, 1987, when the Scientology Organization (CSC) filed
25 its "Unopposed Motion To Withdraw Memorandum of Intended
26 Decision" wherein Scientology counsel offered "in the interests
27 of judicial economy and in order to terminate this protracted
28 litigation, the movants will forego their appeal and dismiss their
remaining damage claims against Armstrong if the court withdraws
its Memorandum of Intended Decision." Exhibit 1-X at p. 3:3-8.

Although unopposed, Scientology's motion was denied.
Exhibit 1-Y.

1 the Scientology Organization seeks an injunction against Armstrong
2 should be severed and discarded as legally ineffective and
3 unenforceable.

4 ARGUMENT

5 IV. THE PRELIMINARY INJUNCTION SHOULD BE DENIED

6 A. Scientology Is Not Likely To Succeed On The Merits

7 It is within the Court's discretion to grant a preliminary
8 injunction provided that the exercise of discretion is within the
9 bounds of reason and does not contravene uncontradicted evidence.
10 Universal Life Church, Inc. v. State (1984) 158 Cal.App.3d 533,
11 537, 205 Cal.Rptr. 11. The party seeking relief must establish it
12 is likely to succeed on the merits of the action, or will suffer
13 irreparable injury if an injunction is not granted. Code Civ.
14 Proc. § 526 (1) & (2). If the moving party cannot establish that
15 it has a "reasonable probability" of ultimately prevailing at
16 trial on the merits, the court will deny the preliminary
17 injunction. SCLC v. Al Malaikah Auditorium Co. (1991) 230
18 Cal.App.3d 207, 223, 281 Cal.Rptr. 216.

19 1. Scientology Has Not Met Its Burden
20 Which Would Entitle It To Injunctive Relief
21 Because It Is Not Entitled To The
22 Equitable Remedy Of Specific Performance

23 As the basis for injunctive relief, Scientology relies
24 upon the legal conclusion that the agreement can be specifically
25 enforced. Moving Memorandum at p. 13:6-28.

26 Upon, applying Civil Code section 3391 to the circumstances
27 of this case, however, Armstrong cannot be compelled to
28

1 specifically perform the agreement. ^{17/}

2 An injunction cannot be granted to prevent the breach of a
3 contract, the performance of which would not be specifically
4 enforced. Thayer Plymouth Center, Inc. v. Chrysler Motors Corp.
5 (1967) 255 Cal.App.2d 300, 304, 63 Cal.Rptr. 148.

6 The fundamental rule regarding a litigants entitlement to
7 specific performance has been well established for decades.

8 It has been repeatedly held that unless a complaint
9 alleges the reasonableness of the contract and the
adequacy of the consideration it fails to state a
cause of action.

10 Eichholtz v. Nicoll (1944) 66 Cal.App.2d 67, 151 P.2d 664, 666.

11 Thus, it is rote that "equity will not lend its aid to enforce
12 contracts which upon their face are so manifestly harsh and
13 oppressive as to shock the conscience; it must be affirmatively
14 shown that such contracts are fair and just." Jacklich v. Baer
15 (1943) 57 Cal.App.2d 684, 135 P.2d 179, 183. The rationale for
16

17 ¹⁷ In full, Civil Code section 3391 states:

18 WHAT PARTIES CANNOT BE COMPELLED TO PERFORM. Specific
19 performance cannot be enforced against a party to a contract
in any of the following cases:

- 20 1. If he has not received an adequate consideration
for the contract;
- 21 2. If it is not, as to him, just and reasonable;
- 22 3. If his assent was obtained by the
23 misrepresentation, concealment, circumvention, or unfair
24 practices of any party to whom performance would become due
under the contract, or by any promise of such party which has
25 not been substantially fulfilled; or
- 26 4. If his assent was given under the influence of
27 mistake, misapprehension, or surprise, except that where the
contract provides for compensation in the case of mistake, a
28 mistake within the scope of such provision may be compensated
for, and the contract specifically enforced in other
respects, if proper to be so enforced.

1 this rule is grounded in a common sense recognition of the rules
2 of fair play.

3 It is said . . . that the doctrine that he who seeks equity
4 must do equity means that the party asking the aid of the
5 court must stand in a conscientious relation to his
6 adversary; that the transaction from which his claim arises
7 must be fair and just and that the relief itself must not be
8 harsh and oppressive upon the defendant. And that specific
9 performance will always be refused when a contract itself is
10 unfair, one-sided, unconscionable, or affected by any other
11 such inequitable feature, and when specific performance would
12 be oppressive upon the defendant, or would prevent the
13 enjoyment of his own rights, or would in any other manner
14 work injustice.

15 Id, 135 P.2d at 184; Chrittenden v. Hansen (1943) 59 Cal.App.2d
16 56, 138 P.2d 37, 38.

17 The burden is on the plaintiff to plead and prove "that the
18 contract is not inequitable or unconscionable" in order to support
19 a decree of specific performance. Quan v. Kraseman (1948) 84
20 Cal.App.2d 550, 191 P.2d 16, 17; Eichholtz, supra.

21 Scientology has failed to affirmatively plead and prove the
22 fairness and justness of the agreement it seeks to enforce.
23 Scientology appears to argue that who Armstrong is and what he
24 does is so bad that it is fair and reasonable to enforce the
25 agreement against him.

26 Indeed, the entire thrust of Scientology's Verified
27 Complaint For Damages And For Preliminary And Permanent Injunctive
28 Relief For Breach Of Contract is predicated upon an ad hominem
29 attack upon on Armstrong as one who

30 had undertaken a series of covert activities, apart from the
31 litigation, which were intended by Armstrong to discredit
32 Church leaders, spark government raids into the churches,
33 create phony "evidence" of wrongdoing against the Churches
34 and, untimely, destroy the Churches and their leadership.

35 Cmplt. at 4:13-18. Scientology claims that it "obtained

36

1 information about Armstrong's plans and, through a police-
2 sanctioned investigation, provided Armstrong with the 'defectors'
3 he sought." Id. at 4:22-24. These spurious claims, however, have
4 been completely repudiated by the agency investigating the same,
5 the Los Angeles Police Department and District Attorney's Office.
6 Exhibits 2-k, 2-l, and 2-M. Stripped of its vitriol,
7 Scientology's complaint and motion make no effort to affirmatively
8 show that the terms of the agreement are fair and just.

9 Indeed, an examination of the agreement illuminates that it
10 was borne in inequity, was set up to do inequity, and its
11 application does not do equity.

12 a. **The Settlement Agreement Is A Collusive Assault**
13 **On The Integrity Of The Judiciary**
14 **That Was Born Of The Disciplinary Violations**
15 **Of Armstrong's Attorney And The Attorneys Of**
16 **The Scientology Organization.**

17 In order to place in proper perspective the settlement
18 agreement at issue in this case, it is necessary to touch on
19 certain fundamental principles of law which pertain to the conduct
20 of lawyers, and their client's use of the judicial system.

21 Adversaries are not to engage in collusion by engaging in
22 "friendly suits." It is, of course, in this framework that the
23 settlement agreement was drafted, executed, and now, perhaps, will
24 be enforced.

25 The Rules of Professional Conduct require attorneys to be
26 honest with the Court.

27 In presenting a matter to a tribunal, a member: Shall employ,
28 for the purpose of maintaining the causes confided to the
member such means only as are consistent with truth.

Rule of Professional Conduct 5-200 (A).

In presenting a matter to a tribunal, a member: . . .

1 Shall not seek to mislead the judge, judicial officer, or
2 jury by an artifice or false statement of fact or law;

3 Rule of Professional Conduct 5-200 (B).

4 Thus attorneys, who are officers of the Court, must discharge
5 certain duties which are directed solely toward the ascertainment
6 of truth.

7 It is the duty of an attorney to do all of the following:
8 . . . To employ, for the purpose of maintaining the causes
9 confided in him or her such means as are consistent with
10 truth, and never seek to mislead the judge or any judicial
11 officer by an artifice or false statement of fact or law.

12 Business and Professions Code § 6068 (d).

13 Similarly, attorneys are prohibited from dishonesty and
14 corruption.

15 The commission of any act involving moral turpitude,
16 dishonesty or corruption, whether the act is committed in the
17 course of his relations as an attorney or otherwise, and
18 whether the act is a felony or misdemeanor or not,
19 constitutes a cause for disbarment or suspension. [¶] If
20 the act constitutes a felony or misdemeanor, conviction
21 thereof in a criminal proceeding is not a condition precedent
22 to disbarment or suspension from practice therefor.

23 Business and Professions Code § 6106.

24 Clients are not to engage in collusion. In O'Morrow v. Borad
25 (1946) 167 P.2d 483, the California Supreme Court stated "[i]t is
26 contrary to public policy for a person to control both sides of
27 litigation . . . [which is] in accordance with the fundamental
28 principle that one may not be both the plaintiff and the defendant
in an action." Id. 167 P.2d at 486. Thus,

The prevailing doctrine in our judicial system that an action
not founded upon an actual controversy between the parties to
it, and brought for the purpose of securing a determination
of a point of law, is collusive and will not be entertained;
and the same is true of a suit the sole object of which is to
settle rights of third persons who are not parties.

Golden Gate Bridge and Highway Dist. v. Felt (1931) 214 Cal. 308,

1 5 P,2d 585, 589-90. Just as "[i]t necessarily follows that the
2 same party cannot be plaintiff and defendant in the same law suit,
3 even though he sue in one capacity and defend in another,"
4 Redevelopment Agency, Etc. v. City of Berkeley (1978) 143
5 Cal.Rptr. 633, 636-37, it also necessarily follows that a party
6 cannot be the only party in ongoing litigation because he has
7 purchased the absence of his adversary.

8 (1) The Agreement Set Up A Collusive Appeal.

9 As discussed above, the Scientology Organization set out
10 to engineer the reversal of Judge Breckenridge's written decision
11 in Armstrong I. Paragraphs 4A and 4B of the December 6, 1986
12 agreement exempt from the settlement's scope the resolution
13 Scientology's appeal (No. B005912) of the Breckenridge Memorandum
14 Decision. In consideration for Scientology agreeing to pay money,
15 Armstrong was to "waive" his rights to fight its appeal. Thus,
16 the Scientology Organization purchased Armstrong's default in
17 Appeal No. B005912. At that point, the litigation of the appeal
18 became collusive by compliance with the terms set forth in ¶¶ 4A
19 and 4B of the settlement agreement.

20 (a) The Lawyers For The Parties Misled Judge
21 Breckenridge To Prevent His Inquiry
22 Into The Context Of The Settlement
23 And The Content Of Its Terms
24 By Falsely Representing That
25 It Had Been Filed With The Court.

26 On December 11, 1986, the attorneys for the parties in
27 Armstrong I presented Judge Breckenridge with a Joint Stipulation
28 of Dismissal and an Order Dismissing Action With Prejudice.
Exhibit 1-J, Reporter's Transcript of Proceedings, Thursday,
December 11, 1986 at p. 2:12-17.

1 In part, the Joint Stipulation stated as follows:

2 On December 6, 1986, the parties entered into a "Mutual
3 Release of All Claims and Settlement Agreement. An executed
4 copy of same Agreement has been filed herein under seal and
5 shall be kept under seal by the Clerk of this Court. This
6 Court shall retain jurisdiction, and may reopen this case at
7 any time for the purpose of enforcing said Agreement.

8 Exhibit 1-K.

9 On December 11, 1986, Judge Breckenridge signed an "Order
10 Dismissing Action With Prejudice" that the parties' attorneys
11 presented to him. It said "That an executed duplicate original of
12 the parties' 'Mutual Release of All Claims and Settlement
13 Agreement" filed herein under seal shall be retained by the Clerk
14 if this Court under seal." Exhibit 1-L at p. 2:1-6.

15 The attorneys for the parties did not comply with the very
16 order they presented to the Court to sign. On December 12, 1986,
17 Judge Breckenridge entered the following order:

18 The Clerk having this date had conversations with counsel for
19 cross-defendant, John G. Peterson, the Court finds that the
20 document entitled "Mutual Release of All Claims and
21 Settlement Agreement" referred to in the Joint Stipulation of
22 dismissal as and executed copy and referred to in the Order
23 Dismissing Action as an executed duplicated original, has not
24 been filed with the court.

25 Exhibit 1-S.

26 In fact, the Settlement Agreement was never filed in Los
27 Angeles Superior Court. Indeed, as recently as December 23, 1991,
28 the Honorable Bruce R. Geernaert (Judge Breckenridge having
retired in the interim) denied SCIENTOLOGY's motion to enforce the
settlement agreement against Armstrong because the settlement
agreement had never been presented to the Court at any time,
despite an order that it be filed. Exhibit 1-T, Reporter's
Transcript of Proceedings, Monday, December 23, 1991, before the

1 Hon. Bruce R. Geernaert, at 10:5-9, 28:24-26; see also, Exhibit 1-
2 H, Reporter's Transcript of Proceedings, Thursday, December 11,
3 1986, before the Hon. Paul G. Breckenridge, Jr.

4 During the course of the December 11, 1986, ex parte
5 proceeding, Judge Breckenridge recognized the impact of the
6 settlement agreement on the then-pending appeal of his June 22,
7 1984, Memorandum of Intended Decision. Thus, he inquired:

8 THE COURT: I read the proposed stipulation and order
9 that have been submitted. And the question arises in my
10 mind, what about the -- does this dismissal have anything at
all to do with the underlying case that is presently on
appeal?

11 MR. FLYNN: It doesn't , Your Honor.

12 Certain issues in that case are going to remain on
13 appeal pursuant to stipulation of the parties.

14 Exhibit 1-J at p. 2:16-23.

15 Attorney Flynn misled Judge Breckenridge by denying that the
16 settlement agreement had "anything at all to do with the
17 underlying case that [was then] on appeal." In fact, according to
18 the express terms of Paragraph 4B of the settlement agreement, the
19 Scientology Organization engineered a collusive resolution of the
20 appeal - in the obvious hope of obtaining a reversal of Judge
21 Breckenridge's scathing June 22, 1984 written decision - by
22 ensuring that there was no further opposition.

23 Thus, in his above-quoted response to Judge Breckenridge,
24 attorney Flynn violated Business and Professions Code §§ 6068 (d)
25 and 6106, and Professional Rules 5-200(A) & (B) by dissembling in
26 order to avoid inquiry into the substance of the settlement
27
28

1 agreement. ^{18/}

2 Had Flynn been honest with Judge Breckenridge, or had the
3 court been able to inquire with any depth into, and discover the
4 circumstances of, the Armstrong settlement, it would have
5 discovered that the Armstrong settlement was part of a package
6 settlement agreement negotiated on behalf of nineteen plaintiffs
7 and, at the same time and as part of the package, Flynn negotiated
8 settlement of his own cases against the Scientology Organization.
9 Exhibit 2-I.

10 Additionally, Flynn failed to disclose and Judge Breckenridge
11 did not find out that part of the settlement was that Armstrong's
12 attorneys would never represent anyone adverse to Scientology
13 again, including Armstrong. Exhibit 2, Armstrong Decl. at ¶ 14.

14 Finally, Flynn failed to disclose to Judge Breckenridge that
15 Scientology Organization attorney Lawrence E. Heller and Flynn had
16 entered a side agreement under which Armstrong would be

17
18 ¹⁸ It is clear that Flynn believed Judge Breckenridge would
19 not approve the settlement if he knew about Paragraphs 4A and 4B.
20 Similarly, Judge Breckenridge had clearly expressed his rejection
21 toward Scientology's efforts to suppress the truth in Armstrong I
22 by specifically enumerating the breadth of their right to
23 communicate regarding Armstrong I subject matter. He stated:

24 "Defendant and his counsel are free to speak or communicate upon
25 any of Defendant Armstrong's recollections of his life as a
26 Scientologist or the contents of any exhibit received in evidence
27 or marked for identification . . . in any other legal proceedings
28 . . . defense counsel shall have the right to discuss exhibits
under seal . . . defendant or his attorney [may] testify
concerning the fact of any such exhibit . . . or its contents . .
. and no violation of this order will occur. . . defendant and
his counsel may discuss the contents of any documents under seal .
. . with any duly constituted Governmental Law Enforcement Agency
or submit any exhibits or declarations thereto concerning such
document or materials, without violating any order of this court."

28 Exhibit 1-G at 3:3-26. (Emphasis added.)

1 indemnified if the appeal of the Breckenridge Decision was
2 successful. Exhibit 1-R, Appellants' Supplemental Appendix In
3 Lieu of Clerk's Transcript at 6-7, Indemnity Agreement. Mr. Flynn
4 also failed to disclose to Judge Breckenridge that fact that he
5 and the Scientology attorneys had entered into a stipulation
6 whereby if the Breckenridge decision was reversed the total
7 damages that Scientology could obtain from Armstrong on retrial
8 would be \$25,001.00. Exhibit 1-Q, Appellants' Supplemental
9 Appendix In Lieu of Clerk's Transcript at 5, Stipulation.

10 It is likely that had the foregoing matters been disclosed to
11 Judge Breckenridge, he would have rejected the settlement
12 agreement as an attempt to perpetrate a fraud on the Court, and as
13 a violation of Rule of Professional Conduct 1-500 (A) which
14 states:

15 A member shall not be a party to or participate in
16 offering or making an agreement, whether in connection with
17 the settlement of a lawsuit or otherwise, if the agreement
restricts the right of a member to practice law.

18 Presently, Armstrong cannot so much as obtain a declaration
19 from any of his counsel in Armstrong I regarding the settlement
20 agreement because they are bound by agreements with Scientology to
21 say nothing about Armstrong I.

22 (b) **Scientology Organization Attorney Lawrence E.
23 Heller Has Not Been Honest With This Court.**

24 The fact that a collusive resolution of the Scientology
25 Organization's appeal in Armstrong I was a material part of the
26 settlement agreement is carefully omitted by attorney Lawrence E.
27 Heller in his Declaration submitted to this court in support of
28 SCIENTOLOGY's instant application for injunctive relief.

Mr. Heller states:

1 3. One of the individuals whose cross-complaint was settled
2 during these negotiations was Gerald Armstrong. He had
3 originally been sued by the Church of Scientology of
4 California ("CSC"), and that suit was on appeal and not being
5 settled. Only Armstrong's cross-complaint was involved in
6 the settlement. [emphasis added.]

7 Declaration of Lawrence E. Heller in Support of Motion for
8 Preliminary Injunction, Ex. 4 at 1:20-24.

9 Heller's representation to this Court, when compared with the
10 provisions of ¶ 4B of the settlement agreement, misleads this
11 Court as to the intent of the parties, and the purpose of the
12 agreement, when it was engineered in December 1986.

13 Attorney Heller's misrepresentation to this Court is simply a
14 continuation of that which Armstrong's then-attorney, Michael J.
15 Flynn, made to Judge Breckenridge on December 11, 1986, when the
16 lawyers stipulated that Armstrong's Cross-Complaint was to be
17 dismissed. Said misrepresentation should be rejected as a
18 transparent ploy to add a color of legitimacy upon an agreement
19 the nature of which prevents it from every being legitimate.
20 Thus, with attorney Heller's assistance, and in addition to the
21 foregoing misrepresentation regarding the appeal, the Scientology
22 Organization (CSI) is attempting to mislead this Court, and place
23 a veneer of legitimacy on the settlement agreement, by stating
24 that there was "approval of the Agreement by both the Court and
25 Armstrong's attorney." Memorandum of Points and Authorities in
26 Support of Plaintiff's Motion for Preliminary Injunction for
27 Breach of Contract, p. 11:5-6.

28 //

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1 (2) **The Settlement Agreement By Collusion**
2 **Engineered A Device To Effect Scientology's Control**
3 **Of Exhibits In United States v. Zolin.**

4 SCIENTOLOGY obtained Armstrong's assent so as to use him
5 to retrieve evidence that the judiciary ultimately found to fall
6 within the crime-fraud exception to the attorney-client privilege
7 in United States v. Zolin, then Case No. CV 85-0440-HLH (Tx) in
8 the U.S. District Court, Central District of California, which on
9 December 6, 1986 (the date of settlement), was on appeal before
10 the Ninth Circuit. Armstrong I was ultimately a subject centrally
11 involved in the Supreme Court opinion reported in United States v.
Zolin (1989) 109 S.Ct. 2619, 105 L.Ed.2d 469.

12 Zolin arose from an investigation of L. Ron Hubbard, founder
13 of the Church of Scientology, by Criminal Investigation Division
14 of the Internal Revenue Service ("CID/IRS"). Id. 105 L.Ed.2d at
15 480. In the course of its investigation, the CID/IRS sought
16 access to 49 documents, including two most important tape
17 recordings, that had been filed under seal in Armstrong II. Id.
18 105 L.Ed.2d at 481. See also Exhibit 2, ¶ 4. Scientology sought
19 to block CID/IRS access to the documents in Armstrong II by
20 asserting the attorney-client privilege as a basis for injunctive
21 relief obtained in the United States District Court for the
22 Central District of California. Citing the crime-fraud exception
23 to the privilege, the CID/IRS opposed. The District Court upheld
24 the privilege. On appeal the Ninth Circuit affirmed. Id. 105
25 L.Ed.2d at 481-83. The United States Supreme Court addressed
26 whether the attorney-client privilege between Scientology and some
27 of its attorneys should be abrogated on the basis "that the legal
28 service was sought or obtained in order to enable or aid the

1 client to commit or plan to commit a crime or tort." Id. at 105
2 L.Ed.2d at 489. In Zolin, the Supreme Court reversed the Ninth
3 Circuit's ruling, in United States v. Zolin (9th Cir. 1987) 809
4 F.2d 1411, that the Government had not made a sufficient showing
5 that there had been "illegal advice . . . given by [Scientology]
6 attorneys to [Scientology] officials" to invoke the crime-fraud
7 exception to the attorney-client privilege. Upon reversing and
8 remanding, the Supreme Court ordered the Ninth Circuit to review
9 partial transcripts of the tape recordings sought by the IRS in
10 the criminal investigation of Scientology to determine whether the
11 crime-fraud exception to the privilege applied. On remand, the
12 Ninth Circuit held:

13 The partial transcripts demonstrate that the purpose of the
14 [Mission Corporate Category Sort Out] project was to cover up
15 past criminal wrongdoing. The MCCS project involved the
16 discussion and planning for future frauds against the IRS, in
17 violation of 18 U.S.C. ¶ 371. [citation.] The figures
involved in MCCS admit on the tapes that they are attempting
to confuse and defraud the U.S. Government. The purpose of
the crime-fraud exception is to exclude such transactions
from the protection of the attorney-client privilege.

18 United States v. Zolin (6/20/90) 90 Daily Journal D.A.R. 6890.

19 Exhibit 1-KK.

20 Pursuant to Paragraph 7E(c) of the settlement agreement
21 specifically addressing the MCCS tapes in Zolin, the Scientology
22 Organization required Armstrong to "assist [the Scientology
23 Organization] in recovering these documents as quickly as
24 possible, including but not limited to these tapes."

25 Thus, in this regard, as well as respecting the Armstrong I
26 appeal, the Scientology Organization used the settlement agreement
27 as a tool of collusion in attempt to suppress evidence of its
28 wrongdoing.

1 (3) The Settlement Agreement Seeks To Suppress Evidence
2 Of Judicially Creditable Facts Which Discredit
3 The Scientology Organization; Such Violates Public
4 Policy And Renders The Contract Void.

5 What Scientology is seeking to do is to remove
6 Armstrong, and all others like him, from playing any role in the
7 truth seeking process, whether such process be in competition
8 found in the public marketplace of ideas, or in the truth-seeking
9 forum provided by the judiciary. Thus, by eliminating those who
10 are knowledgeable of its history and practices, Scientology seeks,
11 quite literally, to shape public opinion and skew judicial
12 decision-making by writing its own script. Thus, with no regard
13 for the truth, Scientology may rest secure in the knowledge that
14 it has purchased the silence of witnesses adverse to it. ^{19/}

15 The consideration of a contract must be lawful. Civil Code
16 section 1607. If any part of the consideration is unlawful the
17 entire contract is void. Civil Code section 1608. Consideration
18 is unlawful if it is contrary to an express provision of law,
19 contrary to the policy of express law, though not expressly
20 prohibited, or otherwise contrary to good morals. Civil Code
21 section 1667. The object of the contract is the thing which it is

22 ¹⁹ Such is precisely the type of agreement that current
23 Senate Bill No. 711 seeks to outlaw. As amended January 27, 1992,
24 Senate Bill No. 711 states:

25 Notwithstanding any other provision of law, as a matter of
26 public policy, in actions based on fraud, or based upon
27 personal injury . . . no part of any confidentiality
28 agreement, settlement agreement, stipulated agreement, or
29 protective order to keep from public disclosure information
30 that is evidence of fraud shall be entered or enforceable
31 upon settlement or conclusion of any litigation or dispute
32 concerning the fraud . . .

33 Exhibit 1-LL, Senate Bill No. 711, Sec. 2 at p. 2.

1 agreed, on the party receiving the consideration, to do or not to
2 do. Civil Code section 1595. The object must be lawful when the
3 contract is made. Civil Code section 1596. Whether or not a
4 contract in a given case in contrary to public policy is a
5 question of law to be determined from the circumstances of each
6 particular case. Bovard v. American Horse Enterprises (1988) 201
7 Cal.App.3d 832, 838, 247 CR 340; Kallen v. Delug (1984) 157
8 Cal.App.3d 940, 951, 203 CR 879; Russell v. Soldinger (1976) 59
9 Cal.App.3d 633, 642, 131 CR 145.

10 It is a fundamental rule of construction of contracts that
11 all applicable laws in existence when an agreement is made, which
12 laws the parties are presumed to know and have in mind,
13 necessarily enter into the contract and form a part of it without
14 any stipulation to that effect, as if they were expressly referred
15 to and incorporated in the agreement. People v. Hadley (1967) 257
16 Cal.App.2d Supp. 871, 881.

17 "Agreements to suppress evidence have long been held void as
18 against public policy, both in California and in most common law
19 jurisdictions." Williamson v. Superior Court (1978) 21 Cal.3d
20 829, 836-37. In Brown v. Freese (1938) 28 Cal.App.2d 608, the
21 California Court of Appeal adopted section 557 of the Restatement
22 of the Law of Contracts prohibiting as illegal those agreements
23 which sought to suppress the disclosure of discreditable facts.
24 The court stated:

25 A bargain that has for its consideration the nondisclosure of
26 discreditable facts . . . is illegal. . . . In many cases
27 falling within the rule stated in the section the bargain is
28 illegal whether or not the threats go so far as to bring the
case within the definition of duress. In some cases,
moreover, disclosure may be proper or even a duty, and the
offer to pay for nondisclosure may be voluntarily made.

1 Nevertheless the bargain is illegal. Moreover, even though
2 the offer to pay for nondisclosure is voluntarily made and
3 though there is not duty to make disclosure or propriety in
4 doing so, a bargain to pay for nondisclosure is illegal.
5 [Emphasis added.]

6 Brown 28 Cal.App.2d at 618.

7 In Allen v. Jordanos' Inc. (1975) 52 Cal.App.3d 160, 125
8 Cal.Rptr. 31, the court did not allow a breach of contract action
9 to be litigated because it involved a contract that was void for
10 illegality. In Allen, plaintiff filed a complaint for breach of
11 contract which he subsequently amended five times. Plaintiff, a
12 union member, was entitled by his collective bargaining agreement
13 to have a fair and impartial arbitration to determine the truth or
14 falsity of the allegations against him of theft and dishonesty.
15 The allegations of the amended complaints stated that there had
16 been an agreement between the parties whereby defendant laid off
17 plaintiff, defendant's employee, and allowed plaintiff to receive
18 unemployment benefits and union benefits. "Defendants also agreed
19 that they would not communicate to third persons, including
20 prospective employers, that plaintiff was discharged or resigned
21 for dishonesty, theft, a bad employment attitude and that
22 defendants would not state they would not rehire plaintiff." Id.
23 at 163. Plaintiff alleged there had been a breach in that
24 defendants had communicated to numerous persons, including
25 potential employers and the Department of Human Resources and
26 Development, that plaintiff was dishonest and guilty of theft and
27 for that reason had resigned for fear of being discharged for
28 those reasons, that plaintiff had a bad attitude and that
defendants would not rehire him. Plaintiff alleged as a result of
the breach he suffered a loss of unemployment benefits, union

1 benefits and earnings. The court held that the plaintiff had
2 bargained for an act that was illegal by definition, the
3 withholding of information from the Department of Human Resources
4 Development. It stated:

5 The nondisclosure was not a minor or indirect part of
6 the contract, but a major and substantial consideration
7 of the agreement. A bargain which includes as part of
8 its consideration nondisclosure of discreditable facts
9 is illegal. (See Brown v. Freese, 28 Cal.App.2d 608, 618
10 [83 P.2d 82].) It has long been hornbook law that
11 consideration which is void for illegality is no
12 consideration at all. [Citation.]

13 Id. 52 Cal.App.3d at 166.

14 The object of a contract must be lawful. Civil Code sections
15 1550, 1596. If the contract has a single object, and that object
16 is unlawful, the entire contract is void. Civil Code section
17 1598.

18 Civil Code § 1668 states:

19 All contracts which have for their object, directly or
20 indirectly, to exempt anyone from responsibility for his
21 own fraud, or willful injury to the person or property
22 of another, or violation of law, whether willful or
23 negligent, are against the policy of the law.

24 Since an agreement to suppress evidence or to conceal a
25 witness is illegal, Witkin, § 611 at 550. Penal Code §§ 136,
26 136.1, and 138; Mary R. v. B. & R. Corp. (1983) 149 Cal.App.3d
27 308, 196 Cal.Rptr. 871; Tappan v. Albany Brewing Co. (1889) 80
28 Cal. 570, 571-572, and the combined effect of the "global
settlement" has been to remove the availability as witnesses of
most former high-ranking Scientologists, such can "lead to subtle
but deliberate attempts to suppress relevant evidence."

1 Williamson, 21 Cal.3d at 838. ²⁰/

2 In his work Equity Jurisprudence (4th Ed.1918) § 397 at 738,
3 Professor Pomeroy states:

4 Whenever a party, who as an actor, sets the judicial
5 machinery in motion to obtain some remedy, has violated
6 conscience, good faith, or other equitable principle, in
7 his prior conduct, then the doors of the court will be
8 shut against him in limine; the court will refuse to
9 interfere on his behalf, to acknowledge his right, or to
10 award him any remedy. [Emphasis added.]

11 Thus, where a contract is made either (1) to achieve an
12 illegal purpose, or (2) by means of consideration that is not
13 legal, the contract itself is void. Witkin, Summary of California
14 Law (9th Ed. 1987) Vol. 1, Contracts, § 441 at 396.

15 A party need not plead the illegality as a defense and the
16 failure to do so constitutes no waiver. In fact, the point may be
17 raised at any time, in the trial court or on appeal, by either the
18 parties or on the court's own motion. Id. at § 444, at 397;
19 LaFortune v. Ebie (1972) 26 Cal.App.3d 72, 75 ["When the court
20 discovers a fact which indicates that the contract is illegal and
21 ought not to be enforced, it will, of its own motion, instigate an
22 inquiry in relation thereto."]; Lewis & Queen v. M.M. Ball Sons
23 (1957) 48 Cal.2d 141, 147-148 ["[T]he court has both the power
24 and the duty to ascertain the true facts in order that it may not
25 unwittingly lend its assistance to the consummation or
26 encouragement of what public policy forbids [and] may do so on its

27 ²⁰ See Exhibit 4, Declaration of Toby L. Plevin, for the
28 some of effects of said settlement agreements on those litigating
against Scientology. See also Exhibit 2-L for enumeration of
those individuals settling as part of the package. Note that most
were mentioned as witnesses in Judge Breckenridge's opinion.

1 own motion."]. ²¹/

2 Thus, the court will look through provisions that may appear
3 valid on their face, and with the aid of parol evidence, determine
4 that the contract is actually illegal or is part of an illegal
5 transaction. Id. 48 Cal.2d at 148 ["[A] court must be free to
6 search out illegality lying behind the forms in which the parties
7 have cast the transaction to conceal such illegality."]; Witkin, §
8 445 at 398.

9 There are two reasons for the rule prohibiting judicial
10 enforcement, by any court, of illegal contracts.

11 [T]he courts will not enforce an illegal bargain or lend
12 their assistance to a party who seeks compensation for
13 an illegal act [because] . . . Knowing that they will
14 receive no help from the courts . . . the parties are
15 less likely to enter into an illegal agreement in the
16 first place.

17 Lewis & Queen, supra, 48 Cal.2d at 149 [308 P.2d at 719].

18 This rule is not generally applied to secure justice
19 between parties who have made an illegal contract, but
20 from regard for a higher interest - that of the public,
21 whose welfare demands that certain transactions be
22 discouraged. [Emphasis added.]

23 Owens v. Haslett (1950) 98 Cal.App.2d 829, 221 P.2d 252, 254.

24 Illegal contracts are matters which implicate public policy.
25 Public policy has purposefully been a "vague expression . . .
26 [that] has been left loose and free of definition in the same

27 ²¹ If the question of illegality develops during the course
28 of a trial, and when a court discovers a fact which indicates that
the contract involved is illegal and ought not to be enforced, the
court must instigate in inquiry in relation thereto. Thus,
whenever the evidence discloses the relations of the parties to
the transaction to be illegal and against public policy, it
becomes the duty of the court to refuse to entertain the action.
The disclosure is fatal to the case, and the court is justified in
rendering judgment that neither party take anything from the
other. Agran v. Shapiro (1954) 127 Cal.App.2d.Supp. 807, 273 P.2d
619, 631.

1 manner as fraud." Safeway Stores v. Hotel Clerks Intn'l Ass.
2 (1953) 41 Cal.2d 567, 575, 261 P.2d 721. Public policy means
3 "anything which tends to undermine that sense of security for
4 individual rights, whether of personal liberty or private
5 property, which any citizen ought to feel is against public
6 policy." Ibid. Therefore, "[a] contract made contrary to public
7 policy may not serve as the foundation of any action, either in
8 law or in equity, [Citation] and the parties will be left where
9 they are found when they come to court for relief. [Citation.]"
10 Tiedje v. Aluminum Paper Milling Co. (1956) 46 Cal.2d 450, 454,
11 296 P.2d 554.

12 It is well settled that agreements against public policy
13 and sound morals will not be enforced by the courts. It is a
14 general rule that all agreements relating to proceedings in
15 court which involve anything inconsistent with [the] full and
16 impartial course of justice therein are void, though not open
17 to the actual charge of corruption.

18 Eggleston v. Pantages (1918) 103 Wash. 458, 175 P. 34, 36;

19 Maryland C. Co. v. Fidelity & Cas. Co. of N.Y. 71 Cal.App. 492

20 Fong v. Miller (1951) 105 Cal.App.2d 411, 414, 233 P.2d 606.

21 "In other words, where the illegal consideration goes to the whole
22 of the promise, the entire contract is illegal." Witkin, § 429 at
23 386; Morey v. Paladini (1922) 187 Cal. 727, 738 ["The desire and
24 intention of the parties [to violate public policy] entered so
25 fundamentally into the inception and consideration of the
26 transaction as to render the terms of the contract nonseverable,
27 and it is wholly void."].

28 Based upon all of the foregoing, this Court should summarily
deny the Scientology Organization (CSI)'s application for
preliminary injunction.

1 (a) Paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 7I, 10, 18D, 18E
2 Cumulatively So Violate Public Policy As To
3 Taint And Void The Entire Contract.

4 Armstrong proposes that the cumulative effect of the
5 contractual provisions operates, and was intended to operate, to
6 eliminate judicially sworn and credited information, the validity
7 of which was litigated in Armstrong I, which tends to discredit
8 Scientology. The Scientology Organization wants to use the legal
9 system to bury evidence developed by the legal system in order to
10 minimize its accountability and legal exposure. Such objective
11 can be achieved by removing the availability of such information
12 from the grasp of those whom Scientology has hurt.

12 Professor Witkin states:

13 It is obviously an obstruction of justice to conceal,
14 suppress, falsify or destroy evidence which is relevant and
15 known to be sought or desired for use in a judicial
16 proceeding or an investigation by law officers.

17 Witkin, California Criminal Law (2d.Ed. 1988) Vol. 2, § 1132,
18 at p. 1311. The provisions of the settlement agreement that are
19 obstructive of justice are:

- 20 ▶ Those setting up a collusive appeal (4A, 4B).
- 21 ▶ Those prohibiting Armstrong from mentioning Scientology
22 or L. Ron Hubbard to anyone, or letting anyone mention
23 such subjects to him (7D).
- 24 ▶ Those manipulating the court's custody of evidence in
25 Zolin and Armstrong I. (7E)
- 26 ▶ Those prohibiting Armstrong from exercising his First
27
28

1 Amendment right to freely associate with those adverse
2 to Scientology. (7G)

3
4 ▶ Those prohibiting Armstrong from giving testimony in any
5 judicial, legislative or administrative proceeding
6 unless pursuant to subpoena, and to avoid service of
7 compulsory process as well as not discuss Scientology or
8 Scientology litigation with anyone. (7H)

9
10 ▶ Those prohibiting the parties from using in any future
11 litigation, facts that were developed in Armstrong I.
12 (7I)

13
14 ▶ Those prohibiting Armstrong from providing information
15 to law enforcement agencies exposing the practices of
16 the Scientology Organization similar to those litigated
17 before Judge Breckenridge. (10)

18
19 ▶ Those prohibiting the disclosure of the contents of the
20 settlement agreement. (18D)

21
22 There is a limited number of individuals who were highly
23 placed in the Scientology Organization's power structure. There
24 is an even more limited number of individuals who are strong
25 enough to stand up to Scientology's "Fair Game Policy" and risk
26 being "lied to, tricked, sued or destroyed." There are even fewer
27 who will be publicly sworn and give testimony on what Scientology
28 is and how it works. By the use of the threat of "Fair Game" on

1 one hand, and the offer of money on the other, Scientology
2 purchased the silence of those former officials who publicly and
3 effectively opposed it in the courts in Armstrong I.

4 **(b) Scientology's Scheme Of Suppression**
5 **Violates The Penal Code Because**
6 **It Is An Effort To Intimidate Witnesses.**

7 The integrated effect of the identified provisions is to
8 throw a blanket over judicially tested and credible evidence which
9 discredits Scientology; to tie down, secure, and guard such
10 blanket with the threat of prosecuting a lawsuit for disobedience
11 to its settlement provisions and publicly coming forward. Such
12 constitutes a crime against public justice because it is designed
13 to intimidate witnesses and prevent them from giving testimony.

14 Penal Code section 136.1, in part, provides:

15 (a) Except as provided in subdivision (c), any person
16 who does any of the following is guilty of a misdemeanor:

17 (1) Knowingly and maliciously prevents or dissuades
18 any witness or victim from attending or giving testimony at
19 any trial, proceeding, or inquiry authorized by law.

20 (2) Knowingly and maliciously attempts to prevent or
21 dissuade any witness or victim from attending or giving
22 testimony at any trial, proceeding, or inquiry authorized by
23 law.

24 (c) Every person doing any of the acts described in
25 subdivision (a) or (b) knowingly and maliciously under any
26 one or more of the following circumstances, is guilty of a
27 felony . . . under any of the following circumstances: . . .

28 (2) Where the act is in furtherance of a conspiracy...

(4) Where the act is committed by any person for
pecuniary gain or for any other consideration acting upon the
request of another person. All parties to such transaction
are guilty of a felony.

(d) Every person attempting the commission of any act
described in subdivisions (a), (b), and (c) is guilty of the
offense attempted without regard to success or failure of
such attempt.

1 A contract must have a lawful object, and that a contract for
2 an object prohibited by the Penal Code is void. Civil Code
3 sections 1596, 1598, and 1599. Since the object of the agreement
4 violates Penal Code § 136.1, it is void.

5 The general rule controlling in cases of this character is
6 that where a statute prohibits or attaches a penalty to the
7 doing of an act, the act is void . . . The imposition by
8 statute of a penalty implies a prohibition of the act to
9 which the penalty is attached, and a contract founded upon
10 such act is void.

11 Smith v. Bach 183 Cal. 259, 262, quoted in Severance v. Knight-
12 Counihan Co. (1947) 29 Cal.2d 561, 177 P.2d 4, 8.

13 If a court is not able to distinguish between the lawful part
14 of an agreement, and the unlawful part, "the illegality taints the
15 entire contract, and the entire transaction is illegal and
16 unenforceable. Keene v. Harling (1964) 61 Cal.2d 318, 321, 38 CR
17 513; Mailand v. Burckle (1978) 20 Cal.3d 367, 384, 143 CR 1.

18 Armstrong submits that the objective of the settlement
19 agreement (and those signed by 17 other individuals), Exhibit 2-
20 L, was to intimidate them from giving testimony. The
21 intimidating taint of the offensive provisions renders the entire
22 transaction unenforceable.

23 **(4) If The Court Does Not Void The Entire Agreement,
24 It Should Sever Paragraphs 4A, 4B, 7D, 7E, 7G, 7H, 7I,
25 10, 18D, 18E From The Settlement Agreement And
26 Adjudicate Them To Be Of No Legal Force Or Effect.**

27 Assuming arguendo, that the entire agreement is not
28 unenforceable, then the Court must save the good part, and sever
and discard the rest. Civil Code section 1599 tells us what to do
with a contract which is partially void, and has at least one
distinct lawful object, and at least distinct unlawful object.
Section 1599 states that the contract is void as to the unlawful

1 objects, and valid as to the lawful objects. ^{22/}

2 Armstrong proposes that contractual provisions 4A, 4B, 7E,
3 7G, 7H, 7I, 10, and 18D are not lawful for the reasons discussed
4 above. Those provisions share the common objective of suppressing
5 credible, judicially tested information which discredits
6 Scientology.

7 In contrast, Paragraphs 1, 2 and 4 have the distinct
8 objective of settling Gerald Armstrong's Cross-Complaint in
9 Armstrong I. Thus, as to the former, the contract is void, while
10 as to the later it is valid.

11 It has long been the law in California that

12 When the transaction is of such a nature that the good part
13 of the consideration can be separated from that which is bad,
14 the Courts will make the distinction, for the . . . law . . .
15 [divides] according to common reason; and having made that
16 void that is against law, lets the rest stand. [Citation].
17 Thus, the rule relating to severability of partially illegal
18 contracts is that a contract is severable if the court can,
19 consistent with the intent of the parties, reasonably relate
20 the illegal consideration on one side to some specified of
21 determinable portion of the consideration on the other side.

22 Keene v. Harling (1964) 61 Cal.2d 318, 320-21; Brown v. Freese,
23 supra.

24 **b. The Agreement Is Not Supported**
25 **By Adequate Consideration.**

26 As discussed above, the agreement is susceptible of two
27 objectives. One was to settle Armstrong's Cross-Complaint. The
28 other was to wipe the slate clean of judicially-credited facts
which discredited Scientology's pretensions to legitimacy. While
the former is valid and supported by monetary consideration, the

29 ²² This principle is recognized in Paragraph 16 of the
30 settlement agreement which states in "the event any provision
31 hereof be unenforceable, such provision shall not affect the
32 enforceability of any other provision thereof." Exhibit 2-D.

1 latter is not. Since the object of the agreement was to suppress
2 evidence and to obstruct justice, Armstrong's performance in that
3 regard is illegal. It violates both express statutes and public
4 policy.

5 c. **Specific Performance Does Not Lie**
6 **Because The Agreement Is Indefinite**
7 **And Uncertain.**

8 Civil Code section 3390 (5) prohibits specific
9 performance of "an agreement, the terms of which are not
10 sufficiently certain to make the precise act which is to be done
11 clearly ascertainable." When one seeks to obtain specific
12 performance, "a greater degree or amount of certainty is required
13 in the terms of an agreement which is to be specifically executed
14 in equity than is necessary in a contract which is the basis for at
15 action at law for damages." Long Beach Drug Co. v. United Drug
16 Co. (1939) 13 Cal.2d 158, 88 P.2d 698, 701. Thus, even though a
17 contract might be valid, it is not necessarily specifically
18 enforceable, or the proper subject of a prohibitory injunction due
19 to its intrinsic nature, or due to lack of definiteness. Ibid;
20 Lind v. Baker (1941) 48 Cal.2d 234, 119 P.2d 806, 812; Hunter v.
21 Superior Court (1939) 36 Cal.App.2d 100, 97 P.2d 492, 498.

22 The contract provisions which Scientology would specifically
23 enforce are fraught with uncertainty. Paragraph 7D prohibits
24 Armstrong from discussing

25 with others . . . their experiences with the Church of
26 Scientology, or concerning their personal or indirectly
27 acquired information concerning L. Ron Hubbard or [the
28 Scientology Organization" and requires him to "maintain
strict confidentiality and silence with respect to his
experiences with L. Ron Hubbard or [the Scientology
Organization]" including "the contents or substance of his
complaint . . . or any documents referred to in Appendix "A"
to this Agreement.

1 Would Armstrong violate the agreement by discussing
2 Scientology with one whose friend had been sentenced to the
3 Rehabilitation Project Force? Would Armstrong violate the
4 agreement were he to discuss with anyone the Fair Game Policy as
5 it is set forth in Allard, Wollersheim, Armstrong or any of the
6 other judicial opinions which mention the Fair Game Policy? Since
7 there is no Exhibit A attached to the settlement agreement filed
8 herein, how can Armstrong know what documents set forth thereon he
9 is not to discuss?

10 Paragraph 7E imposes on Armstrong a

11 continuing duty to return to CSI any and all documents that
12 [were (a) the manuscript for the work "Excalibur" written by
13 L. Ron Hubbard; (b) commonly known as the "Affirmations"
14 written by L. Ron Hubbard; and (c) entered into evidence or
15 marked for identification in Church of Scientology of
16 California v. Gerald Armstrong, Case No C. 420 153] which do
17 in the future come into his possession or control.

18 Without Exhibit A being attached to the settlement agreement,
19 how can Armstrong, or the Court, know when a forbidden document
20 were to come into Armstrong's possession? When is something in
21 Armstrong's control? If one who knew another who had been in
22 Scientology and who had passed along documents to the one, would
23 Armstrong be required to keep the document and return it to
24 Scientology if the one showed it to him?

25 Provision 7G requires Armstrong to "not voluntarily assist or
26 cooperate with any person adverse to Scientology" and "will not
27 cooperate in any manner with any organizations aligned against
28 Scientology." What is assistance or cooperation? When is someone
"adverse" to Scientology or "aligned against Scientology"?

 The operative terms identified above are so subjective that
they are insusceptible of definite interpretation. Given the fact

1 that one man's meat can be another man's poison, there is no
2 reasonable guide which can define the precise meaning of what
3 Armstrong is required to do or not to do when there is no
4 definition as to what is "adverse" or "aligned against"
5 Scientology. Thus, there are no "contractual terms which are
6 sufficiently definite to enable the court to know what it is to
7 enforce." Tamarind Lithography Workshop v. Sanders (1983) 143
8 Cal.App.3d 571, 575, 193 Cal.Rptr. 409; Henderson v. Fisher
9 (1965) 236 Cal.App.2d 468, 477, 46 Cal.Rptr. 173.

10 The foregoing provisions render the agreement fatally
11 uncertain.

12 **d. Specific Performance Does Not Lie**
13 **Inasmuch As It Would Require Protracted**
Supervision And Direction Of The Court.

14 A contract which requires a continuing series of acts
15 and demands cooperation between the parties for successful
16 performance of those acts is not subject to specific performance.
17 Thayler, 255 Cal.App.2d at 303.

18 Courts of equity will not decree the specific performance of
19 contracts which, by their terms, stipulate of a succession of
20 acts whose performance cannot be consummated by one
transaction inasmuch as such continuing performance requires
protracted supervision and direction.

21 Id. at 255 Cal.App.2d at 304; Whipple Quarry Co. v. L.C. Smith
22 Co. (1952) 114 Cal.App.2d 214, 249 P.2d 854, 855; Lind, 119 P.2d
23 at 813; Hunter, 97 P.2d at 498.

24 For the same reasons that the agreement is uncertain, it
25 would require constant supervision to enforce. The court would
26 have to be at the parties' elbow making determinations when
27 anything which related to Scientology was sufficiently attenuated
28 therefrom to allow Armstrong to discuss it, or deciding when

1 someone or something was or was not adverse to, or aligned against
2 Scientology. The agreement is not specifically enforceable
3 because not only would it be impossible for the Court to decipher
4 the ambiguities inherent in the agreement; even if it could
5 rationally construe the agreement, it could never enforce it.

6 Additionally, since it would be impossible for the Court to
7 enforce the agreement, it is not appropriate for the Court to
8 issue an injunction.

9 e. Since There Is No Mutuality Of Remedy,
10 Specific Performance Will Not Lie

11 In bilateral contract, such as the agreement herein,
12 mutuality of obligation and remedy is necessary because of mutual
13 promises. The doctrine requires that the promises on each side
14 must be binding obligations in order to be consideration for each
15 other. Mattei v. Hooper (1958) 51 Cal.2d 119, 122, 330 P.2d 625;
16 Larwin-Southern Calif. v. JGB Inv. Co. (1979) 101 Cal.App.3d 606,
17 637, 162 Cal.Rptr. 52. In order for the agreement to be
18 obligatory on either party, it must be mutual and reciprocal in
19 its obligations. Harper v. Goldschmidt () 156 Cal. 245, 104
20 P. 451.

21 Paragraphs 4A and 4B of the agreement prohibit Armstrong from
22 litigating Scientology's complaint against him on appeal while
23 allowing Scientology to litigate the matter in the appellate
24 courts to the extent it desired.

25 Paragraph 7D prohibited Armstrong from speaking to others
26 about Scientology, but does not prohibit Scientology from talking
27 to others about Armstrong.

28 Paragraph 7E required Armstrong to deliver documents about

1 Scientology to Scientology, but does not require Scientology to
2 deliver to Armstrong documents it possessed concerning him.

3 Paragraph 7G prohibited Armstrong from assisting or
4 cooperating with persons adverse to, or aligned against
5 Scientology, but did not prohibit Scientology from assisting or
6 cooperating with persons who were aligned against or adverse to
7 Armstrong.

8 Paragraph 7H prohibited Armstrong from testifying about
9 Scientology, but did not prohibit Scientology from testifying
10 about Armstrong. ²³/

11 There are two provisions in the agreement that are mutual.
12 One is that Armstrong would dismiss his Cross-Complaint in
13 consideration for a payment of money. The other was in Paragraph
14 7I which stated that neither party would say anything about the
15 other in future litigation. As to the former, Scientology
16 obtained what it paid for, and as to the latter, Scientology has
17 consistently breached it. Thus, as to the provisions that
18 Scientology seek to specifically enforce, specific performance can
19

20 ²³ Lawrence Heller, the attorney who represented to this
21 Court that "Only Armstrong's cross-complaint was involved in the
22 settlement," Heller Decl. In Support of Preliminary Injunction at
23 1:24, states that it was the intention of the parties that
24 Scientology would enjoy a unilateral right to talk about
25 Armstrong, but that he was to say nothing in response. Id. at
26 2:18-3:5. The reasonableness of Armstrong's rejection of Heller's
27 claim, Exhibit 2 at ¶, is supported by Judge Breckenridge's
28 decision, Exhibit 1-G at 1:28-3:26, and the official
investigation if the Los Angeles County District Attorney's Office
of the so-called "police-sanctioned investigation" of Armstrong.
See, Exhibit 2-M, 2-N, and 2-O. In light of the surrounding
circumstances and his uncompromising stand against Scientology, it
is not reasonable to conclude that Scientology could say whatever
it wanted about Armstrong in its legal papers, Exhibits 2-F, 2-G,
2-H, 2-I, 2-J, and 2-K, but he was required not to respond in
papers of his own.

1 not be had because there is an absence of mutuality.

2 **2. To The Extent That The Agreement Is**
3 **In Restraint Of Trade, It Is Invalid.**

4 Scientology contends that enforcement of the agreement
5 should include preventing Armstrong from working as a paralegal
6 for Ford Greene. Cmplt. at 8:25-9:15; Memo. In Support, at 9:17-
7 10:12. Such is an unreasonable restraint of trade.

8 Business and Professions Code section 16600 provides that,
9 subject to exceptions contained in its chapter, "every contract
10 by which anyone is restrained from engaging in a lawful
11 profession, trade, or business of any kind to that extent is
12 void." The Restatement 2d, Contracts § 186 states: "(1) A promise
13 is unenforceable on grounds of public policy if it is unreasonably
14 in restraint of trade. (2) A promise is in restraint of trade if
15 its performance would limit competition in any business or
16 restrict the promisor in the exercise of a gainful occupation."

17 Although covenants not to compete may be enforceable if for a
18 limited time period, such a covenant in perpetuity is not
19 enforceable. Thus, the lifetime prohibition of Armstrong working
20 as a paralegal is void.

21 **3. Armstrong Has Effective Affirmative Defenses**

22 a. Laches

23 A long wait before applying for a preliminary injunction
24 may be evidence that "the harms of which [plaintiff] complain[s]
25 could not have been immediate and urgent." Youngblood v. Wilcox
26 (1989) 207 Cal.App.3d 1368, 1376, 255 Cal.Rptr. 527.

27 Scientology claims that in June, 1991, Cmplt. at p. 2:28,
28 Armstrong began his so-called campaign of "hatred and ill-will"

1 toward Scientology. Id. at p. 1:28-2:1. Rather than seek any
2 relief, Scientology chose to make allegations about Armstrong
3 being a government agent in Church of Scientology International v.
4 Xanthos, U.S. District Court, Central District of California, Case
5 No. 91-4301-SVW(Tx), Exhibit 1-DD, and in Aznaran v.
6 Scientology, Exhibit 1-EE. It was not until October 1991 that it
7 sought to enforce the agreement in Los Angeles as though said
8 agreement had preexisted as a court order when, in fact, it had
9 not. ²⁴/ It was not until February 1992 that Scientology
10 commenced the instant proceedings. The 6-month delay reflects the
11 exigencies of Scientology's harm, that is, not much. Thus, on the
12 basis of laches injunctive relief should be denied.

13 **b. Unclean Hands**

14 The doctrine of unclean hands bars a party from both
15 equitable and legal relief where that party has engaged in any
16 unconscientious conduct directly related to the transaction before
17 the court. De Rosa v. Transamerica Title Ins. Co. (1989) 213
18 Cal.App.3d 1390, 1397, 262 Cal.Rptr. 370. In the instant case,
19 Scientology has unclean hands in that it has made two
20 misrepresentations to this Court.

21 First, it has falsely claimed that the agreement was approved
22 by Judge Breckenridge. Memo. In Support, at p. 11:5-6. As
23 pointed out above, this claim is false.

24 Second, Scientology claimed that the agreement did not
25 involve the appeal of the Breckenridge decision, Heller Decl. at

26 _____
27 ²⁴ This issue is addressed in greater detail in Armstrong's
28 Motion to Dismiss, Stay or Transfer. The portion of that document
which addresses Scientology's enforcement effort in Los Angeles
Superior Court is incorporated herein by reference.



1 p. 1:23-24, when, in fact, it had. Exhibit 2-D at ¶¶ 4A and 4B.

2 Moreover, the entire scheme to suppress the truth on one hand
3 while telling lies about Armstrong on the other smacks of unclean
4 hands. Since Scientology has engaged in such unconscientious
5 conduct, the doors of equity remain closed to it.

6 c. Waiver and Estoppel

7 Paragraph 7I of the agreement states:

8 The parties hereto agree that in the event of any future
9 litigation between Plaintiff and [the Scientology
10 Organization], that any past action or activity, either
11 alleged in this lawsuit or activity similar in fact to the
12 evidence that was developed during the course of this
13 lawsuit, will not be used by either party against the other
14 in any future litigation.

15 Since Scientology violated this provision in the contents of
16 the Affidavits in the Scientology v. Miller case, Exhibits 2-E
17 through 2-K, in Scientology v. Xanthos, Exhibit 1-DD, and in this
18 lawsuit, Cmplt. at p. 4:19-5:28; Farney Decl., Exhibit 1-DD,
19 Exhiobit 1-CC, it cannot now turn around and sue Armstrong for
20 doing what it has already done. Therefore, it has waived its
21 right to sue and is estopped from asserting breaches that it has
22 committed.

23 d. Duress

24 As set forth in his declaration, Exhibit 2, Armstrong also
25 has a good defense of duress as it relates to his execution of the
26 agreement.

27 e. Justification

28 In light of Scientology's attacks on Armstrong after the
settlement agreement, he may assert a defense of justification
with respect thereto. Armstrong, 283 Cal.Rptr. 917.

//

1 B. The Balance Of Hardships Tips In Armstrong's Favor.

2 In addition to addressing whether there is a reasonable
3 probability that plaintiffs will prevail on the merits, the Court
4 must also consider whether the plaintiff is likely "to suffer
5 greater injury from a denial of the injunction than the [defendant
6 is] likely to suffer from its grant." Robbins v. Superior Court
7 (1985) 38 Cal.3d 199, 206, 211 Cal.Rptr. 398; SCLC, 230
8 Cal.App.3d at 223.

9 Scientology characterizes the harm it claims it will suffer
10 if an injunction does not issue as

11 being victimized by Armstrong's violations, while others with
12 interests adverse to the Church benefit in legal proceedings
13 from an unfettered flow of breached obligations, wrongful
14 disclosures and legal infidelity.

15 Memo. In Support of Injunction at 19:24-27. In other words,
16 Scientology will be harmed because the truth about it will come
17 out in court, the same way it did in Armstrong I.

18 Indeed, according to Scientology's verified complaint, it is
19 unable to articulate how it has been hurt by Armstrong. It can
20 say no more that it has "incurred damages which are not presently
21 calculable." Cmpl't. at 7:19-20, 9:11-12. In light of
22 Scientology's own sworn statements regarding the nature of the
23 harm it is presently suffering, one must conclude that will suffer
24 no harm if the injunction does not issue.

25 On the other hand, if the injunction issues, the harm that
26 Armstrong will suffer is articulable and substantial. One, the
27 enforcement of Paragraphs 7D, 7G and 7H would legally prohibit
28 Armstrong from continuing his present employment as a paralegal by
Ford Greene. Two, the enforcement of Paragraphs 7D, 7G and 7H

1 would legally prohibit Armstrong both from the free exercise of
2 his First Amendment right to Free Speech on the subject of
3 Scientology and prohibit him from freely associating with others
4 whom Scientology would characterize as its enemies. Three,
5 enforcement of said Paragraphs would impermissibly intrude upon
6 Armstrong's right to privacy in that said provision would control
7 what Armstrong could think about, with whom he could associate,
8 and to whom he could express his most intimate thoughts and
9 feelings. Four, said Paragraphs are so uncertain in their terms
10 that Armstrong's right to Free Speech would be chilled because he
11 would constantly have to guess where the line was between that
12 which would be permissible and that which would not be. Five, and
13 most insidious, if the Court enforces the provisions of the
14 agreement against Armstrong, Scientology would be free to say
15 whatever it wanted (such as the allegations set forth in the
16 Complaint at pp. 4:13-5:28) and Armstrong would be powerless to do
17 anything to clear his name. Not only would Armstrong be harmed,
18 but so would whatever Court in which such un-rebutted allegations
19 were made, as would the American Public in its efforts to obtain
20 accurate and reliable information regarding the Scientology
21 Organization.

22 **V. The Issuance Of An Injunction Would Be A Prior Restraint**

23 **A. Enforcement By Injunction Would Violate**
24 **Armstrong's First Amendment Rights**

25 An injury is irreparable only if it cannot be undone
26 through monetary remedies. Cate v. Oldham (11th Cir. 1983) 707
27 F.2d 1176, 1189. The United States Supreme Court has stated that
28 "Prior restraints on speech and publication are the least

1 tolerable infringement on First Amendment rights." Nebraska Press
2 Association v. Stuart (1976) 427 U.S. 539, 559. Thus, "The loss
3 of First Amendment freedoms, for even minimal periods of time,
4 unquestionably constitutes irreparable injury." Elrod v. Burns
5 (1976) 427 U.S. 347, 373-74, 49 L.Ed.2d 547; C.B.S., Inc. v. U.S.
6 District Court (9th Cir. 1984) 729 F.2d 1174, 1177. "Under our
7 constitutional system prior restraints, if permissible at all, are
8 permissible only in the most extraordinary of circumstances." Id.,
9 729 F.2d at 1183. Therefore, prior restraint on expression comes
10 with a "heavy presumption" against constitutional validity.
11 Organization For A Better Austin v. Keefe (1971) 402 U.S. 415,
12 419.

13 Even where individuals have entered into express agreements
14 not to disclose certain information, either by consent
15 agreement [citation]; or by an employment contract and
16 secrecy oath [citation], the courts have held that judicial
17 orders enforcing such agreements are prior restraints
18 implicating First Amendment rights.

19 In Re Halkin (D.C. Cir. 1979) 598 F.2d 176, 190.

20 The essential personal and democratic values of free speech
21 have long been recognized as the quintessence of liberty.

22 ". . . freedom of thought and freedom of speech. Of that
23 freedom one may say that it is the matrix, the
24 indispensable condition, of nearly every other form of
25 freedom. With rare aberrations a pervasive recognition
26 of that truth can be traced in our history, political
27 and legal. So it has come about that the domain of
28 liberty, withdrawn by the Fourteenth Amendment from
encroachment by the states, to include liberty of the
mind as well as liberty of action."

Palko v. State of Connecticut (1937) 302 U.S. 319, 326-327.

" . . . Freedom of thought, which includes freedom of religious
belief, is basic in a society of free men." United States v.
Ballard (1944) 322 U.S. 78, 86. Freedom of thought is the

1 primordial constitutional "stuff" from which the First Amendment
2 freedom of speech is derived and which gives that freedom value
3 and meaning. It is basic to our democratic institutions. The
4 value of the freedoms of thought and speech was most eloquently
5 stated by Justice Brandeis in his concurring opinion in Whitney v.
6 California (1927) 274 U.S. 357, 375, wherein he stated:

7 Those who won our independence believed that the final
8 end of the state was to make men free to develop their
9 faculties, and that in its government the deliberative
10 forces should prevail over the arbitrary. They valued
11 liberty both as an end and as a means. They believed
12 liberty to be the secret of happiness and courage to be
13 the secret of liberty. They believed the freedom to
14 **think as you will and to speak as you think** are means
15 indispensable to the discovery and spread of political
16 truth. . . . (emphasis added)

17 Professor Melville B. Nimmer, in "Freedom of Speech: A
18 Treatise on the First Amendment" (1984) put the value of freedom
19 of speech and thought as follows:

20 But it is not just the search for political truth for
21 which freedom of speech is a necessary condition. The
22 search for all forms of "truth," which is to say the
23 search for all aspects of knowledge and the formulation
24 of enlightened opinion on all subjects is dependent upon
25 open channels of communication. Unless one is exposed to
26 all the data on a given subject it is not possible to
27 make an informed judgement as to which "facts" and which
28 views deserve to be accepted. If any governmental body,
be it a legislative body, a censorship board, the police
department or a court of law, decides that the public
should not have access to some of the data on any given
topic because the communication of such data will prove
injurious in some manner, to that extent the public's
ability to make an informed judgement on such topic is
crippled by a distortion of the data before it.

M.B. Nimmer, "Freedom of Speech: A Treatise on the First Amend-
ment" (1984) {1.02[A] p. 1-7.

It is precisely such a distortion that Scientology seeks to
engender by enforcement of its settlement agreement. To
Scientology it makes no difference at what cost to Armstrong's

1 personal liberties such distortion may be obtained. It matters
2 not to Scientology that it files lies about Armstrong in courts
3 around the world, and would sue him for wanting to tell the truth
4 and to set the record straight. It does not matter to Scientology
5 that Armstrong is prevented from discussing years of his life, and
6 expressing what he learned from it, on penalty of being sued. All
7 that is important to Scientology is that all the rules favor it,
8 and no rules favor its enemies, particularly Armstrong. ^{25/}

9 **B. Enforcement By Injunction Would Violate**
10 **The Public's First Amendment Rights**

11 The First Amendment values at issue are not limited to
12 Armstrong. They include the American public as well.

13 The freedom of speech and of the press, which are secured by
14 the First Amendment against abridgment by the United States,
15 are among the personal rights and liberties which are secured
16 to all persons by the Fourteenth Amendment by a state. [¶]
17 The safeguarding of these rights to the ends that men may
18 speak as they think on matters vital to them and that
19 falsehoods may be exposed through the process of education
20 and discussion is essential to free government. Those who
21 won our independence had confidence in the power of free and
22 fearless reasoning and communication of ideas to discover and
23 spread political and economic truth. Noxious doctrines in
24 those fields may be refuted and their evil averted by the
25 courageous exercise of the right of free discussion.
26 Abridgment of freedom of speech and of the press, however,
27 impairs those opportunities for public education that are
28 essential to the power of correcting error through the
processes of popular government.

29 Thornhill v. State of Alabama (1940) 310 U.S. 88, 95. (Emphasis
30 added.)

31 The goal of the First Amendment is "producing an informed
32 public capable of conducting its own affairs." Red Lion

33 _____
34 ²⁵ In addition to the agreement adversely affecting
35 Armstrong's First Amendment Rights, Scientology's interpretation
36 thereof which would allow it to make statements about Armstrong,
37 but not allow Armstrong to respond adversely implicates
38 Armstrong's liberty interest in his reputation and good name.

1 Broadcasting v. F.C.C. (1969) 395 U.S. 367, 392. Thus, "The
2 protection of the public requires not merely discussion, but
3 information." New York Times v. Sullivan (1964) 376 U.S. 254,
4 272. The mark at which the First Amendment aims is "the widest
5 possible dissemination of information from diverse and
6 antagonistic sources." Associated Press v. United States 326 U.S.
7 1, 20.

8 [A]bove all else, the First Amendment means that government
9 has no power to restrict expression because of its message,
10 its ideas, or its content. [Citations.] To permit the
11 continued building of our politics and culture, and to assure
12 self-fulfillment for each individual, our people are guaranteed
13 the right to express any thought, free from government
14 censorship. The essence of this forbidden censorship is
15 content control. Any restriction of expressive activity
16 because of its content would completely undercut the
17 'profound national commitment to the principle that debate on
18 public issues should be uninhibited, robust and wide-open.

19 Police Department v. Mosley (1972) 408 U.S. 92, 96.

20 It is irrefutable that were this Court to specifically
21 enforce Scientology's settlement provisions, it would be engaging
22 in the most blatant form of content control. In light of the
23 decisions in Allard, Wollersheim, and Armstrong, it is clear that
24 the public has a substantial interest in learning the truth about
25 Scientology.

26 Indeed, in the litigation in America concerning Russell
27 Miller's book, Bare-Faced Messiah (1987 Penguin Books) ²⁶/ Judge

28 ²⁶ Not only was Bare-Faced Messiah the litigation in which
the Long Affidavits were filed concerning Armstrong, Exhibits 2-F
through 2-K, the Preface of the book was dedicated almost entirely
to Armstrong who is quoted as saying:

"I realized I had been drawn into Scientology by a web of
lies, by Machiavellian mental control techniques and by fear.
The betrayal of trust began with Hubbard's lies about
himself. His life was a continuing pattern of fraudulent
(continued...)

1 Leval wrote:

2 Hubbard is unquestionably a figure of legitimate public
3 concern. As the founder of a religion drawing vast numbers
4 of adherents, as the author of instructive books which have
5 sold millions of copies, and as a figure who at times in his
6 life sought a high degree of publicity and at other times
7 sought seclusion and secrecy, he is a subject of great public
8 interest. If it is arguable (which I do not judge) that his
9 career and the Scientology religion have been advanced
10 through deception, this is certainly a subject appropriate
11 for critical exploration.

12 New Era Publications International v. Henry Holt and Company, Inc.

13 (1988 S.D.N.Y.) 695 F.Supp. 1493, 1506. See also Exhibits 3-A
14 (Los Angeles Times series) and 3-B (Time Magazine cover story).

15 Since the "First Amendment forbids the government to regulate
16 speech in ways that favor some viewpoints or ideas at the expense
17 of others," City Council v. Taxpayers for Vincent (1984) 466 U.S.
18 789, 804, it seeks to "preserve an uninhibited marketplace of
19 ideas in which truth will ultimately prevail, rather than to
20 countenance the monopolization of that market, whether it be by
21 Government itself or a private licensee." Red Lion, 395 U.S. at
22 390.

23 It is precisely what the First Amendment forbids that
24 Scientology is asking this Court to do. Scientology is asking
25 this Court to assist it in suppressing the truth known by Gerald
26 Armstrong so that it can monopolize and inhibit the "marketplace
27 of ideas" where the American public will judge it. Such a result
28 is anathema to our system.

29 ²⁶(...continued)

30 business practices, tax evasion, flight from creditors and
31 hiding from the law. He was a mixture of Adolf Hitler,
32 Charlie Chaplin and Baron Munchhausen. In short, he was a
33 con man."

34 Bare-Faced Messiah, at pp. 5-6.

1 Scientology may contend that it has bought Armstrong's right
2 to free speech, but even if it did, and Armstrong disputes that,
3 it cannot get the Court to do the dirty work of imposing prior
4 restraints for it. "If there be time to expose through discussion
5 the falsehood and fallacies, to avert the evil by the processes of
6 education, the remedy to be applied is more speech, not enforced
7 silence." Whitney, 274 U.S. at 377. "Speech concerning public
8 affairs is more than self-expression; it is the essence of self-
9 government. It is the right of the public to receive suitable
10 access to social, political, aesthetic, moral and other ideas and
11 experiences." Ibid. The scope of the First Amendment "goes
12 beyond protection of the press and the self-expression of
13 individuals to prohibit government from limiting the stock of
14 information from which the members of the public may draw." First
15 National Bank of Boston v. Bellotti (1978) 435 U.S. 765, 783. The
16 First Amendment protects the public constitutional interest in
17 receiving information. Kleindienst v. Mandel (1972) 408 U.S. 753,
18 762-63.

19 In light of the strong constitutional policies supporting
20 free speech, and Scientology's long history of litigation in the
21 First Amendment arena, the instant lawsuit is no more than a
22 vexatious exercise in bullying and harassment.

23 The law can be used very easily to harass, and enough
24 harassment on somebody who is simply on the thin edge anyway,
25 well knowing that he is not authorized, will generally be
sufficient to cause his professional decease. If possible,
of course, ruin him utterly.

26 Exhibit 2-B. The Court should reject this.

27 On the basis of the First Amendment alone, the preliminary
28 injunction should be denied.

1 VI. CONCLUSION

2 Based upon the foregoing points, Defendant Gerald Armstrong
3 respectfully submits that Scientology's motion for a preliminary
4 injunction should be denied.

5 DATED: March 16, 1992

HUB LAW OFFICES

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7 By: 

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GERALD ARMSTRONG

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